**Supreme Court No. 18-1235**
**Audubon County District Court No. GCPR008999**

**IOWA SUPREME COURT**

**In the Matter of the Guardianship and Conservatorship of Marvin M. Jorgensen, Ward**

**Roxann Wheatley, Rick Wheatley, and Dallas Wheatley, Appellants**

Date of District Court Decisions: April 27, 2018 and June 21, 2018

*ON APPEAL FROM THE IOWA DISTRICT COURT*
*IN AND FOR AUDUBON COUNTY*
*HONORABLE KATHLEEN A. KILNOSKI, DISTRICT COURT JUDGE*

# Appellants' Final Brief

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## Routing Statement

This case warrants transfer to the Iowa Court of Appeals. None of the criteria in *Iowa R App P* § 6.1101 supporting the Iowa Supreme Court's retention of the appeal are applicable.

## Statement of the Case

This case involves the guardianship and conservatorship of Marvin M. Jorgensen ("the Ward" or "Marvin"). Appellants in this action are Roxann Wheatley, Rick Wheatley and Dallas Wheatley (collectively, the "Wheatleys"). This appeal arises from the District Court's ruling wrongfully revoking a settlement agreement and reforming and terminating farm leases entered into between the Wheatleys and Security National Bank ("SNB") as Conservator for Marvin. The Wheatleys do not appeal all parts of the District Court's Orders, but only those specified in the Statement of Issues contained herein.

The District Court erred in revoking the settlement agreement entered into in January 2017, and in terminating the Wheatleys' leases entered into in August 2017.

The District Court's Order of April 27, 2018, should be reversed and remanded with instructions specified below.

## Statement of Facts

### A. Marvin's Management of Farm Properties

Marvin owns approximately 18,000 acres of agricultural land in eleven Iowa counties. (App. at 617). He leases this land to family and non-family tenants. (*Id.*). Marvin has three adult children: Mark Jorgensen ("Mark"), Michael Jorgensen ("Michael"), and Appellant Roxann Wheatley ("Roxann"). (*Id.*). Marvin leases farmland to each of these children and their spouses. (*Id.*). Appellant Rick Wheatley ("Rick") is Roxann's husband and rents farmland from Marvin. (App. At 400; March 14, 2018 Tr., p. 6). Marvin also leases property to several grandchildren, including Appellant Dallas Wheatley ("Dallas"), who is Rick and Roxann's son. (*Id.*; App. at 448).

For decades, Marvin managed his own personal and financial affairs, including leasing and managing his land. (App. at 312). Marvin's dealings with farm tenants were entirely formalized with unwritten or "handshake" agreements and leases. (App. at 617). It is undisputed that Marvin gave significant rental discounts to family members in their leases. Marvin provided these discounts in part because he intended to devise nearly all of his property to charitable causes, such as the Mayo Clinic, upon his death or in 2030. (App. at 618).

Marvin's children and grandchildren leasing his land had various operations. Rick and Roxann did not own cattle and farmed only row crops. (App. at 312). Michael only raised cattle, has never been a crop farmer and has never leased crop ground from Marvin. (*Id.*). Mark and Dallas each had mixed operations, farming both row crops and raising cattle. (App. at 400, March 14, 2018 Tr., p. 23; App at. 400, March 15, 2018 Tr., p. 42). Accordingly, Marvin's property supported these varied operations, *i.e.* crops, hay, pasture, *etc*. Marvin's apportionment of resources and land was entirely at his discretion, known only to himself, and varied by year.

In October 2016, Marvin suffered a stroke impairing his ability to manage his personal and business affairs. (App. at 12). On December 21, 2016, Marvin filed a Voluntary Petition for Guardian and Conservator requesting the Court appoint Roxann as guardian and Roxann and Security National Bank ("SNB") as co-conservator over Marvin and his estate. (*Id.*). The District Court then appointed James Mailander as Guardian Ad Litem (GAL) for Marvin. (App. at 63).

**B. Settlement Agreement**

On January 27, 2017, Roxann, Mark, Michael, Shane (one of Marvin's grandchildren), SNB as Marvin's proposed Conservator, James Mailander as Marvin's GAL and their respective counsel as disclosed in the Settlement

Agreement, participated in mediation to resolve all disagreements. (App. at 65). The mediation resulted in a "Jorgensen Family Settlement Agreement" ("Settlement Agreement"). (App. at 67). All parties acknowledged they had reviewed the Settlement Agreement and consented to it. (*Id.*). The Settlement Agreement provided that Roxann would be appointed Marvin's Guardian and SNB would be Conservator of Marvin's property. (App. at 68). Transfer of Marvin's brokerage business to Shane was rescinded. (*Id.*).

The Settlement Agreement created a "Family Council" consisting of Mark, Michael, and Roxann – each of Marvin's children. (*Id.*). The Family Council was to provide guidance and assistance to SNB in fulfilling its duties and implementing Marvin's past course of informal and unwritten dealings with family members. (*Id.*). SNB agreed to give "due deference" to Family Council and take into consideration Marvin's prior course of dealing with his children and their family members. (*Id.*). As part of and attached to the Settlement Agreement, the Family Council generated a "Family Recommendation to Conservator", which provided:

> "Roxann Wheatley, Michael Jorgensen and Mark Jorgensen make the following recommendation to the Conservator pursuant to Jorgensen Family Settlement paragraph 3:
>
> 1. All current farm leases will remain in effect.
> 2. All farm leases shall be extended to the year 2030;

3. Rents will be calculated at the Iowa State University cash rent for medium quality ground, effective March 1, 2018 less $40 per acre as per past course of dealing."

("Family Council Recommendation")

(App. at 77).

The Family Council Recommendation acknowledged Marvin's past course of dealing involved substantially reducing lease rates to all family members. (*Id.*). However, because Marvin did not lease his property on the same basis to all family members, the Settlement Agreement ensured (1) each family lease would be on cash rent basis, (2) rent discounts would be calculated according to the same Iowa State University ("ISU") standard (3) rent reductions would be identically reduced for all family members, and (4) the lease terms for family members would each extend to 2030, when Marvin's Will directed that his property be liquidated. (App. At 31). Marvin's GAL, representing Marvin's best interests, SNB, acting as Marvin's Conservator, and all other parties agreed to the Settlement Agreement. (App. at 67).

On January 31, 2018, Marvin's GAL filed an Application requesting that the District Court approve the Settlement Agreement, including the Family Council's Recommendation. (App. at 65). The District Court

approved the Settlement Agreement and Family Council Recommendation the following day. (App. at 78).

### C. Family Farm Leases

On May 24, 2017, SNB requested an order from the District Court authorizing SNB to execute and enter into any and all agreements, leases and instruments, and to perform all other acts necessary or appropriate to manage Marvin's land. (App. at 89). The District Court authorized SNB to do so on June 2, 2017, without objection from any parties. (App. at 93). Pursuant to this Order, SNB entered into leases on behalf of Marvin with both non-family and family members. (App. at 330; App. at 341; App. at 351; App. at 360). SNB relied on family members to inform it which properties should be included in their respective leases. (App. at 400, March 14, 2108 Tr., p. 27-28). In accordance with the approved Settlement Agreement, each lease between SNB and a family member reflected the rental reduction of $40.00 per acre below ISU published rates. (App. at 330; App. at 341; App. at 351; App. at 360). SNB entered into leases with Roxann and Rick on August 15, 2017, and with Dallas the following day on August 16, 2017. (App. at 330; App. at 360). Paragraph 18 of Rick and Roxann's lease stated that Rick and Roxann, as tenants, "may sublet the Real Estate or any portion thereof to Dallas Wheatley and Michael Jorgensen for cornstalk grazing. (App. at 335).

Similarly, Michael Jorgensen's lease states that he agrees to pay cash rent for all cornstalk and hay ground leases entered into between Tenant (Michael) and Family Members. (App. at 356).

On February 9, 2018, more than a year after the Court approved the Settlement Agreement and Family Council Recommendation, and six months after the Wheatleys executed their leases, SNB requested the District Court review the family farm leases. (App. at 312). SNB requested the Court "review and determine whether, by giving deference to the [Family Council's recommendation] and to the Ward's past course of dealing, [SNB] will be . . . in compliance with its fiduciary duty [to preserve and maximize the Ward's assets]." (App. at 314). The District Court was aware of the provisions of the Settlement Agreement and the family recommendation attached to the Settlement Agreement at the time it approved the Settlement Agreement. (App. at 67; App. at 78). Presumably, the Court did not feel that SNB giving deference to the Family Council's recommendation was in violation of SNB's fiduciary duty or it would not have approved the Family Settlement Agreement. (App. at 78). The Court held a two-day trial on SNB's Application for Review of the Family Farm Leases. (App. at 617). At the trial, SNB testified that it wanted to continue as conservator and that it didn't feel the bank had done anything worthy of being removed as Conservator. (App. at

400, March 14, 2018 Tr., p. 50). SNB further testified that the concerns regarding the leases only came about after subleasing negotiations pursuant the signed leases between Marvin's children failed. (*Id.* at 35).

## D. Trial and Order of April 27, 2018.

### The Wheatleys' Leases and Family Settlement Agreement

Throughout trial on March 14 and 15, 2018, it remained uncontroverted that (1) all parties agreed the Settlement Agreement's reduction of $40.00 per acre from the ISU standard was Marvin's past course of dealing with family members, (2) SNB and the Wheatleys entered into the leases in accordance with the Settlement Agreement, (3) the lease rents applied equally to all family members leasing land from Marvin and would continue to 2030, and (4) the rent reduction did not diminish the value of Marvin's land.

Dylan Dinkla ("Dinkla"), speaking on behalf of SNB in its role as Marvin's Conservator, testified that the ISU rate was ". . .the standard for most fiduciaries that are dealing with farm ground," referring to it as, "the default position for rent." (App. at 400, March 14, 2018 Tr. p. 55). Although Dinkla also noted the ISU rate was below "market rate" for the area, he generally does not consider lease rates of neighboring farms, instead noting, "[t]he [ISU rate] is the one that carries." (*Id.*). Dinkla agreed that the Family Council's Recommendation of $40.00 under the ISU rate was part of the Settlement

Agreement and SNB and the Wheatleys entered into their leases in accordance with the Settlement Agreement and Family Council Recommendation. (App. at 400, March 14, 2018 Tr., P. 38 – 39).

Nancy Moore ("Moore"), a recordkeeping and payroll employee at Marvin's brokerage for over forty (40) years, testified that Marvin wanted to switch all his family member leases to a cash rent basis and provide for an equal discount for all family members. (App. at 400, March 14, 2018 Tr., p. 93-94). Moore testified, "[w]hat [Marvin] wanted was that his three children all be treated the same when it come [sic] to fair market value or a reduction in the rent." (App. at 400, March 14, 2018 Tr., P. 99). When asked if she believed it would be consistent with Marvin's intentions for all family members to receive the same rent reduction, Moore responded, "[y]es, I do." (*Id.*). The Settlement Agreement changed all family leases to cash rent leases and provided the same discount to all family members until 2030, when the land would be liquidated. (App. at 330; App. at 341; App. at 351; App. at 360).

Clint Freund, a farm manager employed by Farmers National Company ("FNC"), testified about two discussions with Marvin: one by telephone on April 28, 2016, and the other in person on May 10, 2016. (App. at 400, March 15, 2018 Tr., p. 125). These discussions concerned the *possibility* of hiring

FNC to manage his properties. (*Id.*). Following these meetings, Freund sent written proposals to Marvin setting forth what FNC would do to manage his properties and what services it could offer. (*Id.*). Further, the proposal referenced a comment Marvin allegedly made during the meeting of continuing to offer family members a discount of $25.00 under market value. (App. at 400, March 15, 2018 Tr., p. 126-27). Mark was present during Marvin's meetings with FNC, but still signed the Settlement Agreement and the Family Council Recommendations agreeing to the rent reductions. (*Id.* at 129). The record is void of any indication that that Marvin accepted any of FNC's proposals, and it is undisputed that Marvin did not ultimately hire FNC.

April 27, 2018, Order: The District Court determined that the discounts were the "product of too many errors" and that the reduction set forth in the Settlement Agreement was "not prudent." (App. at 619). The Court wrongfully found that letters from FNC outlining proposals best reflected Marvin's intent, even though Marvin rejected the proposals. (App. at 621). The Court ordered FNC to take over management of Marvin's farmland and provide family members with a discount of $25.00 under "market value." (App. at 623). At the time of trial, Dallas had leased tillable acres at what are referred to as the Chappel Farm and the Snake Farm for three years. (App. at

778). Both the Snake Farm and Chappel Farm had a portion of the land enrolled in the Conservation Reserve Program (CRP). (*Id.*). The CRP acres were not included in any lease agreement with any family member, because those acres were already subject to a contract with the government. At the trial, Michael asked for the CRP portions of both the Snake Farm and Chappel Farm to be included in his lease. (*Id.*).

Dallas also asked that the portions of the Snake and Chappel Farms enrolled in CRP be included in his lease. (*Id.*). The Court's Order effectively, and in direct contravention of Iowa law, terminated Dallas's lease on the tillable acres on the Chappel Farm by awarding the entire Chappel Farm to Michael. (App. at 623). Without identifying any legal basis for doing so, the District Court "reformed" Dallas's lease by removing the Chappel Farm and adding it to Michael's lease. (*Id.*). The April 27, 2018 Order terminating Dallas's lease as to the tillable acres on the Chappel Farm was unlawful and violated the statutory requirements for termination of farm leases in Iowa Code §§ 562.5–.7. (Iowa Code Ann. §§562.5–.7).

The District Court also did not order compensation to Dallas for investments already made in the Chappel Farm in reliance on the lease, which was entered into more than nine (9) months before the District Court's April 27, 2018 Order. (App. at 617).

In its April 27, 2018 Order, the Court reformed the Wheatleys leases with regard to grazing options, by holding that family operators could continue to enter into subleases but not for profit subleases, directly contrary to the provisions in the leases signed by Marvin's children. (App. at 623; App. at 356; App. at 335).

**Corning Farm**

Evidence at Trial: Robert Stougard, Marvin's employee who had worked with Marvin for six (6) years, testified that Marvin told him with regard to the Corning Farm that "Dallas would be taking it over towards the end of the year." (App. at 400, March 14, 2018 Tr., p.115-17). Dallas also testified that Marvin previously informed him that Marvin intended to lease the property to Dallas. (App. at 400, March 15, 2018 Tr., p. 46-50). Michael agreed that he had not used the Corning Farm since 2013 or 2014 prior to taking it over in 2017. (App. at 400, March 14, 2018 Tr., p. 159-60). Dallas testified that without the Corning Farm, he had nowhere to store his cattle and was forced to sell them at a loss. (App. at 400, March 15, 2018 Tr., p. 48).

April 27, 2018, Order: The Court found that since Michael had used the property previously, albeit not since 2013 or 2014, it should be kept under his lease. (App. at 620).

### E. The Wheatleys' Motion to Reconsider, Amend, or Enlarge Findings.

Following the District Court's Order of April 27, 2017, SNB and the Wheatleys moved the Court to reconsider, amend or enlarge its findings and reverse certain portions of its Order. (App. At 626). SNB's Motion raised several concerns about its duties as Conservator since it was ordered not to duplicate services by FNC or negotiate future leases, yet FNC would be not be bonded, have no fiduciary duty, or have Court oversight. (App. at 646).

At the hearing on May 18, 2018, the Conservator noted,

> "[T]he conservator is not adverse to the leases as they are. The information was received from the families. The [Settlement Agreement] was put forth. The [Settlement Agreement] was followed. There's scrivener's errors in the lease which are minor . . . [and] which can be easily adjusted so that the conservator has no issue with the leases. It was agreed to to [sic] proceed forward to that [sic] 2030, and the conservator followed the family recommendation and entered them for that period of time."
>
> (App. at 653, May 18, 2018 Tr., p. 18-19).

Despite this, the Court did not revise its Order reforming the Wheatleys' leases. (App. at 775).

Chappel Farm. Regarding the Chappel Farm, in its June 21, 2018 Order, the District Court acknowledged, "In 2016, Dallas Wheatley had an oral lease with Marvin to crop farm those parts of the Chappel Farm and Snake Farm that were not enrolled in the CRP." (App. at 778). Despite this, the Court

stated that it still declined to revise its Order of April 27, 2018 with regard to the Chappel and Snake Farms. (*Id.*). However, the Court still held as follows:

> "Michael's lease of the parcels set out in Exhibit M-5 and M-6 (with the exception of the Snake farm) shall not include any leases to raise crops. Michael may lease hay ground on the parcels set out in M-5. Michael may raise hay on the hay ground in parcels set out in M-6. Michael shall lease hay ground and run cattle on stalks at market rates. The Wheatleys shall retain the right to farm the crop ground on any M-5 and M-6 parcels leased to them. (App. at 782).

Exhibits M-5 and M-6 contain the Chappel Farm where Dallas already had a lease for the crop acres. (App. at 357; App. at 401; App. at 402).

Grazing leases. At trial, the Conservator testified that it relied on Marvin's children to notify it of Marvin's prior course of dealing and stated that at the time the leases were drafted in 2017, that the Conservator had no knowledge of the leasing of corn stalks by Michael. (App. at 400, March 14, 2018 Tr., p. 9). There is no dispute that Michael signed the lease as presented containing the express terms regarding payment for subleases with other family members. (App. at 351). There was no finding by the District Court of fraud or misrepresentation in drafting or signing of the leases. (App. at 617; App. at 777-778). However, the District Court still Ordered reformation of the leases signed by the Wheatleys and Michael, with no legal basis and contrary to well established contract and farm lease law.

Corning Farm. Regarding the Corning Farm, District Court revised its findings to strike the following sentence from its Order: "Michael disagreed and testified that he has leased the ground since his return to Iowa about seven years ago." (App. at 608). With this revision, the testimony of Dallas and Stougard regarding Marvin's intent to lease the Corning Farm to Dallas was unrebutted. The District Court, however, still failed to revise its Order of April 27, 2018. (App. At 777-778).

**Preservation of Error**

Appellants raised the issues outlined below in their Motion to Reconsider, Amend or Enlarge Findings filed on May 7, 2018. The District Court entered an order on Appellants' Motion to Reconsider, Amend or Enlarge Findings on June 21, 2018 and Appellants' then timely filed a Notice of Appeal to satisfy the requirements for preservation of error.

**Scope of Review**

This case arises from the District Court's Ruling after a two day hearing held March 14-15, 2018 which had the effect of reforming and in some cases terminating farm leases between the Conservator and the Appellants. The Court's scope of review is de novo. Iowa R. App. P. 6.907; *see also In re Estate of Wulf*, 526 N.W.2d 154, 155 (Iowa 1994), (stating "[a]ctions to set

aside or contest will, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity.").

## Argument

**Error 1: The District Court erred by reforming Wheatleys' leases to increase rents, rescind the lease terms, and amend grazing sublease provisions, contrary to Iowa law, Marvin's past course of dealing and the Settlement Agreement.**

Iowa Code Section 633.647 provides that conservators have the authority, with approval of the court, to execute leases. Iowa Code § 633.647 (2018). SNB entered into the Settlement Agreement on behalf of Marvin on January 27, 2017. (App. at 67). SNB agreed to give deference to the Family Council's recommendations regarding Marvin's past course of dealing with family member by keeping the current lease agreements in place, setting the rental rate at $40.00 under the ISU cash rent standard for medium quality ground and to continue the leases until 2030. (*Id.*; App. at 77). Both the settlement agreement and the Family Council Recommendation were approved by the District Court on February 1, 2017. (App. at 78). The District Court subsequently authorized SNB to enter into written leases with family members on this basis. (App. at 93). The Wheatleys' resulting leases reflected

the exact terms of the Settlement Agreement and Family Council Recommendation. (App. at 330; App. at 360).

The District Court made no finding of fraud, mistake, or bad faith on the part of the Wheatleys, SNB, the GAL, or any other parties to the Settlement Agreement or in the leases. (App. at 617; App. at 775). Any alleged errors in the leases involved incorrect legal descriptions or the inclusion of the same legal description on two different leases. (App. at 400, March 14, 2018 Tr., p. 233; App. At 400, March 15, 2018 Tr., p. 66-7).

The District Court's Order reforming the rental rate, lease term and subleasing provisions with regard to grazing must be reversed with instructions to reinstate the Wheatleys' leases originally signed in August of 2017.

### A. The District Court's Order effectively terminating the Settlement Agreement and reforming the Wheatleys' leases violated Iowa law regarding termination of leases.

Iowa law regarding farm leases is both clear and inflexible with respect to the required notifications for termination of leases. Iowa Code § 562.7. Iowa Code § 562.6 states:

> Where an agreement is made fixing the time of termination of the tenancy, whether in writing or not, it shall cease at the time agreed upon, without notice. In the case of farm tenants, except for mere croppers, occupying and cultivating an acreage of forty acres of more, the tenancy shall continue for the following crop year upon

> the same terms and conditions as the original lease unless written notice for termination is given by either party to the other, whereupon the tenancy shall terminate March 1 following; provided further, the tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement.
>
> *Id*. § 562.6

There is no dispute that the Wheatleys' farm leases with SNB fixed the term of the leases to run through March 1, 2030. (App. At 330; App. At 360). There was no evidence presented or even any assertion that the Wheatleys were in default of their written lease with SNB as Conservator for Marvin. To the contrary, the Wheatleys complied in full with the written terms of the leases.

Iowa law also places strict requirements on notifications for termination of a farm lease, requiring that any notice of termination to be served on the tenant, on or before September 1. Iowa Code § 562.7. Based on the term of the Wheatleys' leases to run through March 1, 2030, the earliest that SNB as Conservator for Marvin could have provided notice of termination of those leases would have been September 1, 2029. *Id*. § 562.7. (App. At 330; App. At 360).

Any notice of termination of the Wheatleys leases prior to September 1, 2029 would have been invalid without some showing of Wheatleys' default of their written lease requirements. Iowa Code § 562.6. The Court also

reformed the Wheatleys leases for the 2018 crop year when no notice was sent to the Wheatleys by September 1 of 2017. Instead of applying Iowa's long-standing farm lease law, the Court reformed and cancelled portions of the Wheatleys' leases without complying with Iowa laws setting forth the timing and the form of notice of agricultural lease termination. (App. At 622-624). Even if the Court somehow had authority to terminate any lease, Court's Order of April 27, 2018 was well beyond the September 1 deadline for a notification of termination of a farm lease. (App. At 617; Iowa Code § 562.7).

One objective of the law requiring written notice by September 1 to terminate a farm tenancy the following March, which applies equally to tenants and landlords, is to avoid having productive farmland go to waste by requiring significant advance notice before a change in possession occurred. *Porter v. Harden*, 891 N.W.2d 420 (Iowa 2017). The Wheatleys' leases are undoubtedly a "farm tenancy" under the law. *See* Iowa Code § 562.1A. Iowa Courts have strictly enforced notice of termination provisions for farm leases, stating "we cannot treat these elaborate provisions as merely directory. The statute is mandatory." *Leise v. Schiebel,* 67 N.W.2d 25, 26 (Iowa 1954).

Because the Wheatleys' leases were written agreements fixing the time of the termination of the tenancies, the tenancy could only terminate, at the very earliest, on the agreed upon date on March 1, 2030. Iowa Code § 562.6.

Paragraph 1 of the leases stated that the Wheatleys were to have possession "to commence on March 1, 2017, and end on March 1, 2030." (App. at 330; App. at 360).

The Court's cancelation of the lease rates on April 27, 2018, was well beyond the deadline of September 1, 2017. There was no evidence – and the District Court did not find – that the Wheatleys attempted to deceive SNB or any other party in entering into the Settlement Agreement or leases. The Court provided no legal analysis or reasoning for its decision and also failed to order compensation to the Wheatleys for expenses they made in reliance on the leases. (App. at 400, March 15, 2018 Tr. p. 46-47, 56-58; App. at 617; App. at 775).

Because the Court violated Iowa law regarding termination of farm leases and the required notifications, the Court's Order canceling the Wheatleys' leases must be reversed and the original leases signed by the Wheatleys and SNB should be reinstated.

### B. There was no finding of mistake, fraud, ambiguity, unconscionability, bad faith, or that the Settlement Agreement or leases failed to reflect the "true agreement" between the parties.

"Iowa law permits reformation of a written agreement *that fails to reflect the 'true agreement' between the parties***.**" *Nationwide Agribusiness*

*Ins. Co. v. PGI Intern*, 882 N.W.2d 512, 518 (Iowa App. 2016) (emphasis added). In reforming an instrument a court should not change an agreement between the parties but change a drafted instrument to conform to the parties' real agreement. *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852 (Iowa 1990).

There was no evidence for the District Court to reform the leases. To warrant reformation, there must be "a definite intention or agreement on which the minds of the parties had met [that] preexisted the instrument in question. There can be no reformation unless there is a preliminary or prior agreement, either written or verbal, between the parties, furnishing the basis for rectification or to which the instrument can be conformed." *Peak v. Adams,* 799 N.W.2d 535, 545 (Iowa 2011) (quoting *Sun Valley Iowa Lake Ass'n v. Anderson,* 551 N.W.2d 621, 636 (Iowa 1996)). Similarly, Iowa Courts have found that it is not within the "function, duty or power of the court to alter, revise, modify, extend, rewrite, or remake contract by construction or to make new or difference contract for the parties…and its duty is confined to construction or interpretation of one which the parties have made for themselves." *Smith v. Stowell,* 125 N.W.2d 795, 798 (Iowa 1954). Here, the only preliminary agreement to the leases was the Settlement Agreement with the Family Council Recommendation. All parties reviewed the Settlement Agreement before signing. (App. At 67). At the GAL's request, the District

Court approved the Settlement Agreement and Family Council Recommendation. (App. at 78). The leases reflected the approved terms. (App. at 330; App. at 360). SNB and Marvin's children signed the leases containing the terms of the Settlement Agreement and Family Council's recommendation. Thus, the Settlement Agreement and the resulting leases clearly reflected the "true agreement" among the parties.

Similarly, there was no ambiguity as to the parties' intentions in either the Settlement Agreement or the leases to justify the District Court's decision. Courts' goal in interpreting a lease is to ascertain the meaning and intention of the parties. Unless the contract is ambiguous, the court determines the parties' intent from the language of the contract. Where the intent of the parties is expressed in clear and unambiguous language, courts must enforce the contract as written. *Stream v. Grow*, 2010 WL 1578233 *4 (Iowa App. 2010) (citing *Petty v. Faith Bible Christian Outreach Ctr., Inc.,* 584 N.W.2d 303, 305 (Iowa 1998)).

Here, the District Court confused two basic issues. Whereas the family leases may have contained errors and overlaps as to properties and services included in the leases, the lease rates and the term of the leases conformed precisely to the terms of the Settlement Agreement (App. at 330-377). The Settlement Agreement, agreed to by all parties and approved by the District

Court, stated Marvin's past course of dealing was reflected by the family recommendation of $40.00 under the ISU standard rate for medium quality ground and to end in 2030. (App. at 77). The Wheatleys' leases reflected this reduction. (App. at 330; App. at 360).

The Wheatleys' leases also reflected the intent of the parties with regard to grazing leases, including whether or not subleasing was available, the parties the real estate could be sublet to and rate to be charged for the sublease and paid to the crop tenant (App. at 335). At trial, the Conservator testified that it relied on Marvin's children to notify it of Marvin's prior course of dealing and stated that at the time the leases were drafted in 2017, that the Conservator had no knowledge of the leasing of corn stalks by Michael. (App. at 400, March 14, 2018 Tr., p. 9). There is no dispute that Michael signed the lease as presented containing the express terms regarding payment for subleases with other family members. (App. At 356). Presumably, if the Conservator was relying on Marvin's children for information regarding Marvin's prior course of dealing, Michael could and should have informed the bank of this alleged prior course of dealing prior to the leases being drafted and ultimately signed. Instead Michael signed the lease that currently stated that he was to pay market rate for sublease with another family member. (*Id.*). Iowa Courts have long held that "one who signs a written contract without

acquainting himself as to its contents is estopped by his own negligence to ask relief from his obligation, if his signature is procured without fraud or artifice." *McCormack v. Molburg*, 43 Iowa 561 (Iowa 1876). As previously stated herein, there was no finding by the district court of fraud or misrepresentation in drafting or signing of the leases. (App. at 617; App. at 775). However, even with no finding of fraud or misrepresentation, the District Court reformed the leases signed by the Wheatleys and Michael, with no legal basis and contrary to well established contract and farm lease law.

The Court found that only Michael may graze cattle on parcels already leased to the Wheatleys after harvest of the crop has been completed and required that Michael pay market rent for such grazing. (App. at 782). The District Court terminated the Wheatleys' leases for purposes of grazing rights by requiring the Wheatleys to sublease the land to Michael for grazing. (App. at 779). There is no dispute that the acres included exhibit M-6, as referenced in the court order as the parcels Michael would be allowed to use for grazing were already subject to a lease with the Wheatleys for the 2018 crop year. (App. at 333-5; 363-4; 399).

Testimony at trial revealed that there were some errors with regard to legal descriptions and specific parcels, but no evidence was introduced that the rental rate or the term of the leases was incorrect. (App. At 653, May 18,

2018 Tr., p. 10-23.). The District Court had no basis to reform the Wheatleys' leases as to rent, duration, and ability to sublease even if the leases required reformation as to other details. *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852 (Iowa 1990).

Further, there was no element of unconscionability in the Wheatleys' leases. "Absent an unconscionable bargaining process, a court should be hesitant to impose its own after-the-fact morality judgment on the terms of a voluntarily executed [contract]." *Stream, supra* at *5, quoting *In re Marriage of Shanks*, 758 NW.2d 506, 516 (Iowa 2008). An agreement is unconscionable at law if it is "'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.'" *Stream v. Grow*, 784 N.W.2d 202 (Iowa App. 2010), quoting *Casey v. Lupkes,* 286 N.W.2d 204, 207 (Iowa 1979). In considering a claim of unconscionability, we examine factors such as "assent, unfair surprise, notice, disparity of bargaining power[,] and substantive unfairness." *C & J Fertilizer, Inc. v. Allied Mut. Ins. Co.,* 227 N.W.2d 169, 181 (Iowa 1975).

The Court's reformation of the leases with regard to subleasing was contrary to Iowa law and standard subleasing procedures. The original leases allowed for the crop tenant (the Wheatleys) to sublease to either Michael or Dallas for the purpose of grazing, but did not require them to do so. (App. at

335; 357). The Court held that Michael has the right to sublease crop acres farmed by the Wheatleys at a fair market rental rate, a rate which is to be paid to the Conservator, not the Wheatleys. (App. at 779). Iowa law is clear, a tenant "has an interest in the premises and has exclusive legal possession of it. This exclusive legal possession means the tenant, and not the landlord, is in control of the premises." *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994). However, by its Order, the Court has improperly and illegally interfered with the Wheatleys' exclusive legal possession of the real estate by forcing the Wheatleys to sublease the real estate to Michael for cattle grazing for no consideration. (App. at 779). Furthermore, what the Court has created is not a sublease but instead an unlawful separate contract between Marvin and Michael for grazing on real estate that is already subject to a farm lease with the Wheatleys. (App. at 779).

Marvin was experienced in farm management and continued to accumulate and manage agricultural land up until his stroke in October 2016. (App. at 312). All parties agree Marvin had always provided substantial discounts to family members, who agreed that this past course of dealing was best reflected and standardized by a rate of $40.00 less than the ISU standard for medium quality ground. (App. At 67; App. At 77). The terms of the Wheatleys' leases were "consistent with Marvin's testamentary plans to sell

his property and give most of it to charity in 2030." (App. at 618). The Conservator and GAL, represented by counsel, agreed and the District Court authorized the Conservator to enter leases with the Wheatleys on this basis. There was no finding of substantive or procedural unconscionability during the formation of the Wheatleys' leases.

There was no legal basis for the District Court to reform the Wheatleys' leases with regard to subleases, rental rates or the term of the leases.

### C. The Conservator was not violating its fiduciary duty to Marvin by applying the rate and time period set forth in the Settlement Agreement.

The District Court's Orders on both April 27 and June 21, 2018 resulted from SNB's concern that it was violating its fiduciary duty to Marvin by continuing his past course of dealing, which was to reduce rents of leases to family members. SNB's concern was unfounded and unsupported by Iowa law.

First, as noted above, the Settlement Agreement, agreed to by all parties in January 2017 and upon which the Wheatleys' leases were based, was negotiated with Marvin's Guardian Ad Litem, who then recommended its approval to the Court. (App. at 65). "[A]s an officer of the court, the guardian ad litem advocates for the best interests of the ward [to the court]." *Palmer v. Swift*, 656 N.W.2d 132, 140, 142 (Iowa 2003). The guardian ad litem "serves

the court, *advising the court*, after an impartial investigation . . .” *In re Guardianship of Griesinger*, 804 N.W.2d 527 (Iowa App. 2011) (citing *Id.*) (Emphasis in original). Additionally, Courts view settlement agreements as contract stating, finding that “settlement agreements are essentially contracts, and general principles of contract law apply to their creation and interpretation.” *City of Dubuque v. Iowa Trust,* 587 N.W.2d 216, 221 (Iowa 1998). More than a year after approving the Settlement Agreement, the Court reformed the resulting leases without finding or even any allegation that Marvin’s GAL violated a fiduciary duty to objectively advocate for Marvin’s best interests in negotiating and recommending the Settlement Agreement.

Moreover, SNB was not violating its duty by upholding the Settlement Agreement. “[Iowa] law imposes a duty on the conservator to protect, preserve, and account for the property, and to perform all other legal duties required by law.” *Iowa Supreme Court Attorney for Disciplinary Bd. v. Murphy,* 800 N.W.2d 37, 43 (Iowa 2011), *citing Iowa Code* § 633.641. Overall, a conservator serves the interest of the ward and the statutory protections exist to accomplish this goal. *Id.* “The controlling principle is that the court will act with reference to the incompetent and for his benefit as he would probably have acted if sane.” *In re Brice's Guardianship*, 233 Iowa 183, 189, 8 N.W.2d 576, 580 (1943).

If the reduced rents for family members are considered "gifts," they were still proper under Iowa law. With court approval, conservators may make gifts "to whom . . . such gifts were regularly made prior to the commencement of the conservatorship . . ." *Iowa Code* § 633.668. Here, it remains undisputed that Marvin regularly reduced rents of his leases to family members prior to his stroke.

As stated above, by carrying out Marvin's past course of dealing as set forth in the court-approved Settlement Agreement, the value of Marvin's farmland was not "diminished" at all. The land would have continued to retain the exact same value for sale in 2030. Nothing in the Wheatleys' leases would have prevented capital improvements and ordinary maintenance of the land. (App. At 330). Indeed, because the land was unaffected by rents charged prior to conveyance, the prospective devisees, including the Mayo Clinic, did not intervene in the case to protest the reduced rates.

Even if Marvin was not "maximizing" the returns on his property, this occurred long before the guardianship and conservatorship. The power of the court in such matters has been likened to its right to authorize donations by a guardian for charitable purposes to which the incompetent had formerly been in the habit of making contributions. *See In re Brice's Guardianship*, 8 N.W.2d at 578.

The District Court ultimately relied on FNC's written proposal to Marvin following the meetings on April 28, 2016, and May 10, 2016. (App. At 621). FNC's proposal for managing Marvin's property included a continued rent reduction of $25.00 per acre discount based on FNC's standard for family members. (*Id.*). However, *Marvin did not hire FNC or accept the proposals*. The letters from FNC to Marvin were not an appropriate basis to reform the Wheatleys' otherwise valid, written leases contrary to well established Iowa farm lease law. Thus, FNC's written proposals have no probative value as to whether the Settlement Agreement reflected his true intentions.

Trial testimony, including Nancy Moore's, clearly established that Marvin's primary concern was that all family members be treated *the same*. (App. at 400, March 14, 2018 Tr., p. 99). Moore testified that Marvin wished to be equally generous with all family members. (App. at 400, March 14, 2018 Tr., p. 93-94). The Settlement Agreement and resulting lease rent reductions ensured that this occurred. All leases were changed to a cash rent basis with an identical discount for each family member and for the same lease term, *i.e*. until 2030. (App. at 330; App. at 341; App. at 351; App. at 360; App. at 370). At the hearing on the Motion to Alter, Amend, or Enlarge, SNB clarified that it was not seeking to cancel the leases altogether, but merely sought the

District Court's clarification of its fiduciary duty. (App. At 653, May 18, 2018 Tr., p.18-19).

A conservator may compromise a pending case, in absence of statutory restrictions, if acting in good faith. See *Salomon v. Newby*, 228 N.W. 661 (Iowa 1930), rehearing overruled 232 N.W. 176. Here, there was never any suggestion that SNB, the GAL, the Wheatleys, or any other person acted in bad faith while negotiating the Settlement Agreement. Continuing Marvin's past course of dealing with family members by entering into the leases at an agreed-upon rate reduction would not be contrary to the conservator's fiduciary duties.

Because SNB was not violating its fiduciary duty as conservator by carrying on Marvin's past course of dealing and clear intentions by providing $40.00 under the ISU standard, the District Court's Order must be reversed.

### D. By reforming the leases, the Court disregarded Marvin's past course of dealing with family members.

In conservatorships, the controlling principle is that the court will act with reference to the incompetent and for his benefit as he would probably have acted if sane. *In re Brice's Guardianship*, 8 N.W.2d 576, 580 (1943).

Marvin undisputedly reduced rents for leases to his family members. These reductions were substantial, though inconsistent. In the Settlement

Agreement, the "Family Council" consisting of Marvin's children agreed that "cash rent" leases at a reduced rate of $40.00 below the ISU rate reflected Marvin's course of dealing. (App. at 77). The parties—including Marvin's Conservator and Guardian Ad Litem—extended the Wheatleys' leases to 2030, the year Marvin intended to liquidate his holdings. (App. at 31). This intention was memorialized in the Settlement Agreement. (App. at 67).

The only apparent caveat to the rule of carrying out the ward's intent is "[t]he making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward." Iowa Code § 633.668. There was no risk of inadequate provision for Marvin's needs or comforts by continuing his past course of dealing, and SNB never raised such an argument. The Court in *In re Brice's Guardianship* was assessing payments that may make invasion of principal of the conservatorship necessary. *Id.* The Court found that the payments could be made even though resort to the principal is necessary and found that neither the Ward nor his large estate would suffer because of the comparatively small payments. *Id.* Similarly, in this Conservatorship, there is no dispute that Marvin has plenty of assets over and above any land that any family members are renting from Marvin and therefore the rental rate and term of the leases, consistent with Marvin's prior history and as approved by the District Court in the Settlement Agreement,

will not negatively impact Marvin. (App. at 744-774). Indeed, at the hearing on the Wheatleys' Motion to Alter, Amend, or Enlarge, the Conservator did not appear to argue against continuation of the Wheatleys' leases until 2030. (App. at 653, May 18, 2018 Tr., p.18-19).

Yet the District Court was persuaded that Marvin "interviewed [FNC]" and "discussed a discount of $25.00 per acre for his family tenants." (App. At 621). Regardless, of any discussion which *may have* occurred, Marvin did not ultimately retain FNC or accept its written proposals. Thus, the FNC's proposals specifically *do not* reflect Marvin's intent. Simply because Marvin met with FNC to explore a possible business relationship, the District Court saw reason to cancel the Wheatleys' otherwise valid, written leases. This decision was unreasonable and contrary to law.

SNB was required to act for Marvin's benefit as he would probably have acted. The Family Council agreed in the Settlement Agreement that his past course of dealing was reflected by $40.00 under the ISU cash rent rate for medium quality ground, which should be applied to all family members until 2030, when the land would be liquidated. This consensus satisfied Marvin's intent for "equality" among his family in the application of his generosity, and did not place Marvin in danger of insolvency or inability to

pay for his needs and comforts. The District Court had no legal basis to cancel the Wheatleys' written leases.

**Error 2: The District Court Erred in Removing the Chappel Farm from Dallas's Written Lease.**

The District Court acted contrary to Iowa law by removing the Chappel Farm from Dallas's written lease and adding it to Michael's lease.

First, as stated above, SNB did not provide Dallas with notice by September 1, 2017, that his lease to the Chappel Farm would be canceled. Dallas's lease to the Chappel Farm was to begin March 1, 2017. (*See* Iowa Code §§ 562.5–.7; App. at 360). The District Court's ruling on April 27, 2018 terminated Dallas's lease with regard to the tillable acres on to the Chappel Farm, nearly eight (8) months past the deadline. No notice was given other than the Court's Order. For the same reasons stated above, the District Court's Order was contrary to Iowa law and must be reversed.

Further, like the District Court's purported "reformation" of the Appellants' leases with regard to rent, the District Court did not make any finding that the Chappel Farm was included in Dallas's lease as the result of fraud, mistake of fact or law, inequitable conduct, or that Dallas's lease did not reflect the true agreement between SNB and Dallas. (App. at 617; App. at 775). As the result, the Court had no legal basis to reform Dallas's lease to

remove the Chappel Farm in order to compensate Michael for alleged damages that were not caused by Dallas. This was contrary to law and profoundly unjust to Dallas.

Dallas had a written lease for the tillable acres on the Chappel Farm. (App. at 357). Additionally, in its June 21, 2018 Order, the District Court stated that crop acres on exhibit M-5 and M-6, which included the Chappel Farm, were to continue to be farmed by the Wheatleys. (App. at 779). Despite this, the Court declined to revise is prior order awarding the entire Chappel Farm to Michael. (App. at 623; 782). The termination of Dallas' right to farm the tillable acres was contrary to the Court's own language and was not in accordance with the required lease termination provisions set forth in Iowa Code § 562.7.

From a factual standpoint, the District Court acted arbitrarily and unreasonably in removing the Chappel Farm from Dallas's lease and adding it to Michael's lease. As stated above, portions of the Chappel Farm and Snake Farm were enrolled in the federal CRP program to be used as "conservation" land. Dallas farmed the remaining portions of both the Chappel Farm and Snake Farm in 2016 and 2017. (App. at 400, March 15, 2018 p. 44). In 2018, the CRP land was set to be used for agricultural purposes once more, and thus, it was added to Dallas's lease. (App. at 366-7). The Court ultimately decided,

without any citation to either the law or facts in the record, that Michael should receive the Chappel Farm, which without clarification included the tillable acres on the Chappel Farm for which Dallas had a written lease that was not terminated by September 1, 2017. (App. At 360; App. At 653).

Reformation of a contract should not be ordered to the prejudice of innocent third persons. *Orr v. Mortvedt,* 735 N.W.2d 610, 615 (Iowa 2007). There was no evidence or finding of any wrong doing by Dallas with regard to any of the leases, yet his lease was reformed to take away land which he farmed pursuant to a valid lease, an action that was undeniably prejudicial to Dallas. (App. At 360).

Second, in purporting to cancel Dallas's lease to the Chappel Farm and giving it to Michael, the District Court did not find—and no parties alleged—that the property was included in Dallas's lease by mistake, fraud, or any other basis that would normally permit reformation of a contract. (See App. at 617 and App. at 775). The District Court did not order Michael or SNB to reimburse Dallas for expenses incurred in reliance on his lease to the Chappel Farm, which Michael has since used to plant row crops contrary to the District Court's Order specifically awarding it to him to use for hay. (App. at 782).

Third, the District Court's removal of the Chappel Farm from Dallas's lease is also arbitrary in light of its decision to increase the Wheatleys' rents

in order to maximize the returns on Marvin's land. The return on the Chappel Farm to Marvin's conservatorship would have been much higher by leasing it to Dallas for row crops rather than to Michael for hay, which is a much lower rent.

The District Court's Order dated April 27, 2018 removing the Chappel Farm from Dallas's lease and adding it to Michael's lease was arbitrary and contrary to law, and therefore, must be reversed.

**Error 3: The District Court Erred By Disregarding Uncontroverted Evidence that Marvin Intended to Lease the Corning Farm to Dallas.**

In addition to removing the Chappel Farm from Dallas's lease, the District Court also decided that Michael—not Dallas—should lease 480 acres on the Corning Farm. (App. at 621). In support of its decision, the District Court claimed that Michael had used the land with Marvin's permission years beforehand. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.904(3)(*g*).

The controlling principle is that the court will act with reference to the incompetent and for his benefit as he would probably have acted if sane. *In re Brice's Guardianship*, 8 N.W.2d 576, 580 (1943). Following the District Court's June 21, 2018 Order, striking certain portions of its previous findings,

the *only* evidence as to Marvin's intentions with regard to the Corning Farm came from Dallas and Robert Stougard, Marvin's employee of six (6) years. Mr. Stougard testified that Marvin told him in the fall of 2016 that, "Dallas would be taking [the Corning Farm] over towards the end of the year." (App. At 400, March 14, 2018 Tr. p. 117). This testimony was corroborated by Dallas, who testified that Marvin informed him of the same intent. (App. At 400, March 15, 2018 Tr., p. 46). This testimony was not rebutted or contradicted. There was no evidence adduced that Mr. Stougard had interest in the case, reason to be dishonest, or any other basis that could have undermined his credibility.

Despite this, the Court decided that Michael—and not Dallas— should lease the Corning Farm, because Marvin previously permitted Michael to use part of the pasture on the property at some point several years beforehand. (*Id*., p.159-60). Michael admitted that he had not used the property since 2014 before using it without permission in 2017 following Marvin's stroke. (*Id.,* p. 160).

In light of the District Court's Order of June 21, 2018, the testimony regarding Marvin's intent to include the Corning Farm in Dallas's lease, not Michael's, was unrebutted. The District Court should have revised the leases accordingly.

## Conclusion

The District Court committed reversible error by reforming the Wheatleys' leases to force the Wheatleys to sublease for no consideration, increase the rent, revoke the lease term duration to 2030 in violation of Iowa's longstanding Iowa lease laws, and by haphazardly removing portions of property from Appellant Dallas Wheatley's lease and adding them to Michael's without evidence or finding of fraud, mistake, unconscionability, or other legal basis to do so. It did so by failing to consider the evidence received at trial and reaching untenable conclusions. Specifically, the Court accepted a proposition that FNC's written proposal regarding management of Marvin's property was reflective of Marvin's true intent, despite his rejection of those same proposals and decision not to hire FNC. The Court is respectfully requested to reverse the decision of the District Court's Orders of April 27, 2018, and June 21, 2018, and remand with instructions as follows:

1. To reinstate the Wheatleys' original rents under leases, which are to be calculated at the Iowa State University cash rent for medium quality ground, effective March 1, 2017, less $40.00 per acre per Marvin's past course of dealing;
2. To reinstate the Wheatleys' original lease terms, which were to be extended to the year 2030;

3. To reinstate the Wheatleys' original lease terms with regard to subleasing rights;
4. To rescind reformation of Dallas Wheatley's lease removing the Chappel Farm and add it to Michael's lease.
5. To reform Michael's lease to remove the Corning Farm and add it to Dallas's lease, consistent with Marvin's stated intent.
6. Grant any other relief the Court feels just and equitable.

## Request for Oral Argument

Counsel for Appellants requests to be heard in oral argument before the court in this matter.

## Cost Certificate

Appellants' counsel certifies that the cost of printing this brief was $0.00.

## Certificate of Compliance

This brief complies with the type-volume limitation of *Iowa R App P* § 6.903(1)(g)(1) or (2) because this brief contains 9,003 words excluding the parts of the brief exempted by *Iowa R App P* § 6.903(1)(g)(1).

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October 10, 2019,

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**Certificate of Filing**

I, Julie Vyskocil, certify that I did file the attached Appellant's Final Brief with the Clerk of the Iowa Supreme Court by EDMS on October 10, 2019.

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