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' Resistance to Application for Further Review (Including Joining Parties' Applications for Further Review) from the Court of Appeals Decision Filed on November 30, 2020

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STATEMENT RESISTING APPLICATION FOR FURTHER REVIEW

The Court of Appeals did not err by (1) finding that the discounted lease rental rates were not gifts in the instant case or, if they were gifts they were not unlawful and were not subject to later reformation by the District Court; (2) in determining that the District Court does not have the authority to rescind orders entered when based upon alleged fraudulent misrepresentations when no finding of fraud was found by the District Court nor was there clear and convincing evidence of fraud found by the Court of Appeals; and (3) in denying the District Court the ability to protect a ward after the Conservator may have breached his fiduciary duty when no such breach was admitted or found in or by the District Court or the Court of Appeals. Contrary to the allegations of the Guardian Ad Litem (GAL) and joining parties, neither Iowa Rule of Appellate Procedure 6.1103(b)(2) nor (4) are applicable in this matter as the matter has been decided by the Supreme Court and/or the matters alleged to be of substantial question of constitutional law, important question of law, and/or of broad public importance were not actually before the Court of Appeals or part of the Decision of the Court of Appeals as alleged by the GAL and joining parties. Accordingly, further review should be denied.

STATEMENT OF THE CASE

This case involves the guardianship and conservatorship of Marvin M. Jorgensen ("the Ward" or "Marvin"). The underlying appeal in this matter arose as a result of 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. On appeal, the Court of Appeals reversed the District Court order, to the extent said District Court opinion modified the rent rates for the Wheatley's leases, modified the duration of the Wheatley's leases, prohibited for-profit subleasing in the Wheatley's leases, removed Chappel Farm from Dallas' lease, and added Chappel Farm to Michael's lease. The GAL seeks further review on issues related to the Court of Appeals decision prohibiting the District Court from rescinding an order and/or modifying the Wheatley leases.

STATEMENT OF FACTS

Marvin owns approximately 18,000 acres of agricultural land in eleven Iowa counties. (App. at 448); *In re Guardianship & Conservatorship of Jorgensen,* No. 18-1235 (Iowa Ct. App. Nov. 30, 2020), p. 2 (hereinafter "Nov. 30, 2020 Ct. App. Dec." 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); Nov. 30, 2020 Crt. App. Dec., p. 2. 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 448). 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 449).

In October 2016, Marvin suffered a stroke impairing his ability to manage his personal and business affairs. (App. at 12); Nov. 30, 2020 Crt. App. Dec., pp. 2-3. 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).

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); Nov. 30, 2020 Crt. App. Dec., p. 3. The mediation resulted in a "Jorgensen Family Settlement Agreement" ("Settlement Agreement"). (App. at 67); Nov. 30, 2020 Ct. App. Dec., p. 3. 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); Nov. 30, 2020 Court of Appeals Opinion, p. 3.

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); Nov. 30, 2020 Ct. App. Dec., pp. 3-4.

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, 2017, Marvin's GAL filed an Application requesting that the District Court approve the Settlement Agreement, including the Family Council's Recommendation. (App. at 65); Nov. 30, 2020 Ct. App. Dec., p. 4. No one filed an objection. *Id*. The District Court approved the Settlement Agreement and Family Council Recommendation the following day. (App. at 78); Nov. 30, 2020 Ct. App. Dec., p. 4.

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); Nov. 30, 2020 Ct. App. Dec., p. 4. The District Court authorized SNB to do so on June 2, 2017, without objection from any parties. (App. at 93); Nov. 30, 2020 Ct. App. Dec., p. 4. In fact, the GAL at the time filed an Answer indicating that the Conservator's request as appropriate and in the best interest of the ward. Nov. 30, 2020 Ct. App. Dec., p. 4. 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). 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).

On February 9, 2018, more than a year after the District Court approved the Settlement Agreement and Family Council Recommendation, and six months after the District Court authorized the Conservator to enter into and the Wheatleys actually executed their authorized leases, SNB requested the District Court review the family farm leases. (App. at 312). SNB requested the District 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).

The District Court held a two-day trial on SNB's Application for Review of the Family Farm Leases. (App. at 448). 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.

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.

On April 27, 2018, the District Court determined that the leases were the "product of too many errors" and that the reduction set forth in the Settlement Agreement was "not prudent." (App. at 450). The District Court expressly found: (1) SNB should remain the conservator, (2) the Family Council is dissolved, (3) Farmers National Company (FNC) should be appointed as a farm manager, (4) the family members' leases should be revised, and (5) the family discounted rent rate should be $25 under the market value per acre. (App. at 450); Nov. 30, 2020 Ct. App. Dec., p. 6.

ARGUMENT

I. THE COURT OF APPEALS DID NOT ERR AS A MATTER OF LAW WITH REGARD TO THE ISSUE OF DISCOUNT RATES AND GIFTING.

The GAL argues that the Court of Appeals erred when it found that the discounted lease/rental rates were not gifts and did not require an order from the District Court approving such gifts. However, such position misinterprets the holding of the Court of Appeals and the procedural and factual background of this case. First, it ignores the fact that the leases, which included the discount rates of $40 off the ISU rate, provided for in the Settlement Agreement, was presented and approved by the District Court on more than one occasion – first on January 31, 2017 when the Settlement Agreement was presented by the original GAL to the District Court, without objection and approved by the District Court in February of 2017 and again when the Conservator requested authority to enter into leases consistent with the terms of the Settlement Agreement on May 24, 2017, which was again approved, without objection, by the District Court on June 2, 2017. (App. 65, 78, 89, 93); Nov. 30, 2020 Ct. App. Dec., p. 4.

As noted by the Court of Appeals:

> Marvin's current GAL also suggests that, even if SNB was authorized to enter leases, SNB was not authorized to enter leases

> *at discounted rates*. The GAL relies on Iowa Code section 633.668, which provides:
>
> For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.
>
> The GAL claims that offering discounted rates to family members constituted "gifts" for purposes of section 633.668. And, the GAL argues, "[t]he June 2, 2017 [o]rder did not make the necessary specific findings or contain an authorization to make gifts which is required by Iowa Code [s]ection 633.668."
>
> ….
>
> Even assuming section 633.668 applies, we disagree that it required the district court to include "specific findings"—or, indeed, any particular language—in the June 2017 order. Although section 633.668 requires an "order of court," it does not specify the contents of the order. And the GAL offers no authority to show that section 633.668 requires specific findings. *See* Iowa R. App. P. 6.903(2)(g)(3). So we conclude that—*unlik*e many *other* statutes that expressly require specific findings or other language in court orders—section 633.668 does not.

Id. p. 14. Whether the lease rental discounts were categorized as gifts or not was not determinative in the Court of Appeals Decision because the Court of Appeals found, whether they were or were not gifts, they were not unlawful and they were approved by the District Court.

Further, the Court of Appeals correctly found that, even if the rent discounts were gifts, they were not unlawful. Section 633.668 permits gifts to people when such gifts were regularly made prior to the commencement of the conservatorship if the gift does "not foreseeably impair the ability to provide adequately for the best interest of the ward." Iowa Code § 633.668 (Iowa 2020). The record is clear that Marvin regularly provided lease discounts to family members prior to the conservatorship and there is no evidence to support impairment of the conservator's ability to provide adequately for the best interest of Marvin. Nov. 30, 2020 Ct. App. Dec., p. 16. "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).

Simply put, the Court of Appeals did not find that discounted lease rents could never be a gift requiring the approval of the District Court, but rather, in the instant case, the record and briefing did not establish that the discounts were gifts and, even if they were, the District Court did originally approve the discounts (gifts or not) and such discounts were not unlawful. Therefore, in the instant matter, there was no basis for the modification exercised by the District Court.

The GAL now cites to the IRS regulations on gifts, an argument that was not presented to the Court of Appeals, and one that asks the Supreme Court to compare apples to oranges – namely, the gifting of partial ownership in a company or land to reduction in rents. Such argument is not properly before the Supreme Court. *Chamberlain, L.L.C. v. City of Ames*, 757 N.W.2d 644, 648 (Iowa 2008) (In an Application for Further Review, the Supreme Court may only consider the "all of the issues properly preserved and raised in the original briefs.")

Accordingly, there was no error on the part of the Court of Appeals and the Application for Further Review filed by the GAL (and the joining parties Applications for Further Review) should be denied.

II. THE COURT OF APPEALS DID NOT ERR IN DETERMINING THAT THERE WERE NO FRAUDULANT MISPRESENTATIONS AND THEREFORE THE DISTRICT COURT DID NOT HAVE THE AUTHORITY TO RESCIND OR REFORM ITS ORDER OR THE LEASES

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). 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).

Contrary to the assertions of the GAL, the Court of Appeals did not find that a Court cannot protect a ward by reforming or rescinding an order or contract when there has been fraud/fraudulent misrepresentation. Rather, neither the District Court nor the Court of Appeals made a finding of fraud, fraudulent misrepresentation, duress, deceit, or even mutual mistake. (App. at 448-450; App. at 606); Nov. 30, 2020 Ct. App. Dec., p. 18 ("we have no 'clear, satisfactory, and convincing' evidence of 'fraud, deceit, duress, or mutual mistake' as to most of the lease features raised in this appeal, namely, the term of the Wheatleys' leases, the Wheatleys' subleasing rights, the Chappel Farm, and the Corning Farm").

The GAL references fraudulent misrepresentations and its Application for Further review would lead one to believe such misrepresentations were

made by the Wheatleys. However, the misrepresentations referenced were allegedly made by Michael and Mark Jorgensen as evidenced by their testimony that, at the time they entered into the leases, they knew that the $40 reduction in rent was not consistent with the Ward's prior course of dealing as to both Michael and Mark. There are no similar citations from the record to any testimony of the Wheatleys, because the Wheatleys have never misrepresented to the Court or to the Conservator what Marvin's prior course of dealing was with regard to the Wheatleys' leases and farming operations. Appellant Rick Wheatley testified that some years Marvin and the Wheatleys entered into a profit-sharing arrangement with regard to the farm land and other years they had a cash rent lease. (App. at 400, March 14, 2018 Tr., p. 239). Rick further testified that when Marvin and the Wheatleys operated on a cash rent lease that the rental rate was reduced by $30 to $40 per acre. (App. at 400, March 15, 2018 Tr., p. 13).

Additionally, Roxann Wheatley testified that in conversations with Marvin prior to his stroke that he had referenced wanting to give his kids a reduction in rent of up to $50 per acre. (App. at 400, March 14, 2018 Tr., p. 213). Mark Jorgensen's testimony was also consistent with regard to the Ward's intentions with regard to reductions in rent as Mark testified that at one time his dad told Mark he wanted to give his kids a $25 to $50 reduction

per acre in rent. (App. at 400, March 15, 2018 Tr., p. 114). Even Marvin's longtime office manager Nancy Moore, testified that it was Marvin's intention to make each of the leases with his children a cash rent lease and to give them all an equal discount. (App. at 400, March 14, 2018 Tr., p. 92-93). The Family Recommendation of $40 below ISU land survey rental rates is consistent with Marvin's prior course of dealing with the Wheatleys and consistent with Marvin's intentions as communicated to both Roxann Wheatley, Mark Jorgensen and Nancy Moore.

Further, as recognized by the Court of Appeals, the only preliminary agreement to the leases in the instant matter 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. Nov. 30, 2020 Ct. App. Dec., pp. 21-22.

Accordingly, there was no error on the part of the Court of Appeals (and the joining parties Applications for Further Review) should be denied.

III. THE COURT OF APPEALS DID NOT ERR WHEN IT FOUND THE DISTRICT COURT COULD NOT MODIFY OR REFORM THE LEASES ("PROTECT A WARD") AFTER HIS CONSERVATOR ADMITTED A BREACH OF ITS FIDUCARY DUTY TO THE WARD AS THERE WAS NO BREACH OF FIDUCIARY DUTY

The GAL argues that the Court of Appeals erred in finding that a District Court could not protect a ward after a conservator admits a breach of fiduciary duty to the ward. Yet again, this position misinterprets the Court of Appeal's Decision and the factual and procedural background of this matter. The District Court, and the Court of Appeals on de novo review, did not make any findings of breach of fiduciary duty on the part of the Conservator or prior GAL(s). (App. at 450); Nov. 30, 2020 Ct. App. Dec., pp. 6, 13-23.

The GAL takes one quote from SNB at hearing out of context where in SNB states that they are asking the District Court give guidance or authority regarding the traditional fiduciary duty related to contracting with family members and noting that under that traditional fiduciary duty (of which the

Court had already allowed to be abrogated by approving the Settlement Agreement, which specifically provided for leases with family members at reduced rates and which the Court directed the Conservator to craft leases consistent with same) they are "somewhat violating the fiduciary duty." (App. for Further Review p. 16). This is far from the admission the GAL touts it to be.

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 484, May 18, 2018 Tr., p.18-19). 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. SNB 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).

April 27, 2018, the District Court determined that the lease agreements were the "product of too many errors" and that the reduction set forth in the Settlement Agreement was "not prudent." (App. at 450) However, the District Court made no finding that SNB (the Conservator) or the previous GAL(s) breached their fiduciary duties and, in fact, the District Court ordered SNB to remain as the conservator which would not have occurred had SNB been guilty of a breach of fiduciary duty. *Id*. Instead, more than a year after approving the Settlement Agreement, the District Court reformed the resulting leases without finding that Marvin's GAL (who had the duty to advocate for the best interest of the ward to the court - *Palmer v. Swift*, 656 N.W.2d 132, 140, 142 (Iowa 2003)) or Marvin's Conservator (whose duty it was act in the interest of and for the benefit of the ward and carry out matters as the ward would have done when he was sane - *Iowa Supreme Court Attorney for Disciplinary Bd. v. Murphy*, 800 N.W.2d 37, 43 (Iowa 2011); *In re Brice's Guardianship*, 233 Iowa 183, 189, 8 N.W.2d 576, 580 (1943)) breached any fiduciary duty. As noted by the Court of Appeals, Marvin was represented by both a GAL and Conservator when the Settlement Agreement was executed, approved (pursuant to request of the GAL) by the Court and when the Conservator requested authority to enter into leases consistent with the Settlement Agreement (with the GAL noting such was in the best interest of

the Ward), received approval of the Court for same, and did draft and execute such Leases with the Wheatleys. Nov. 30, 2020 Ct. App. Dec., pp. 10-11, 14.

In fact, the errors referred to by the District Court were errors regarding legal descriptions of some specific parcels and potential overlaps as to properties and services included in the leases – not errors regarding the discounted lease rental rates or terms. (App. at 330-377, 484, May 18, 2018 Tr., p. 10-23.). The rates and the term of the leases conformed precisely to the terms of the Family Settlement Agreement. *Id*.

As set forth by the Court of Appeals, in order for a contract to be reformed or rescinded, by a Court or otherwise, there must be clear, satisfactory and convincing evidence of fraud, deceit, duress or mutual mistake. Nov. 30, 2020 Ct. App. Dec., p. 17 (*citing Gouge v. McNamara*, 586 N.W.2d 710, 714 (Iowa Ct. App. 1998). Further, reformation is only permissible when "a written agreement fails to reflect the 'true agreement'" of the parties. *Peak v. Adams*, 799 N.W.2d 535, 545 (Iowa 2011).

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. In fact, the Court of Appeals specifically found the rate reduction included in the leases by the Conservator was not unlawful or improperly entered. Nov. 30, 2020 Ct. App. Dec., pp. 16, 18-21.

Finally, the GAL cites no authority that would suggest breach of fiduciary duty is another ground to allow for the reformation of a contract – neither in the brief to the Court of Appeals nor in its Application for Further Review. Such failure may be deemed waiver of this issue. Iowa R. App. Pro. 6.903(2)(g)(3) (2020). For these reasons, the GAL's Application for Further Review (and the joining parties Applications for Further Review) should be denied as there was no error by the Court of Appeals.

CONCLUSION

For the reasons set forth above, the Appellant's Roxann Wheatley, Rick Wheatley, and Dallas Wheatley respectfully request the Supreme Court deny the Applications for Further Review filed by the Guardian Ad Litem as well as the joining parties' Applications for Further Review.

Respectfully submitted,

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Certificate of Filing

I, Julie Vyskocil, certify that I did file the attached Resistance to Application for Further Review with the Clerk of the Iowa Supreme Court by EDMS on January 4, 2021.

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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 4,486 words excluding the parts of the brief exempted by Iowa R. App. P. § 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. § 6.903(1)(e) and the type-style requirements of Iowa R. App. P. § 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point.

January 4, 2021.

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Certificate of Attorneys' Costs

I certify that the cost of printing the foregoing Appellants Resistance to Application for Further Review was $0.00 (exclusive of sales tax, postage and delivery).

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