IN THE SUPREME COURT OF IOWA

No. 19-0008

Jackson County No. ESPR020230

IN THE MATTER OF THE ESTATE OF FRANCIS O. GLASER, Deceased.

STATE OF IOWA ex rel. DEPARTMENT OF REVENUE,
Plaintiff,
Vs.
JUDY E. BOWLING, Fiduciary of the Estate of FRANCIS O. GLASER,
Defendant.

JUDY E. BOWLING, Fiduciary of the Estate of FRANCIS O. GLASER,
Plaintiff-Appellee,
And
STATE OF IOWA ex rel. DEPARTMENT OF REVENUE,
Plaintiff-Appellee,
Vs.
SHERRI M. KINDSFATHER,
Claimant-Appellant.

Claimant-Appellant's Brief and Request for Oral Argument

John T. Flynn, AT#00002597
Brubaker, Flynn & Darland, P.C.
201 W. 2nd Street, Suite 400
Davenport, IA 52801
Tel: (563) 322-2681
Fax: (563) 322-4810
Email: johnflynn01@aol.com
ATTORNEY FOR CLAIMANT - APPELLANT

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APPELLANT'S ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals pursuant to Iowa R. App. P. section 6.1101(3) because the case involves the application of existing legal principles to the facts of this case.

STATEMENT OF THE CASE

NATURE OF PROCEEDINGS

On June 28, 2016, Judy E. Bowling, the Administrator of the Frances O. Glaser Estate, filed her Motion to Set Aside Conveyance and Include Transferred Property in Estate Inventory. (App. pp.9-25)

On July 18, 2016, Kindsfather filed her Resistance, Response and Resistance to Administrator's Motion to Set Aside Conveyance. (App. pp.26-31)

On March 20, 2017, Kindsfather filed her Supplemental Response and Resistance to Administrator's Motion to Set Aside Conveyance asserting affirmative defenses that under Iowa Code Chapter 684 the decedent's transfer of real estate to Kindsfather was not fraudulent with respect to income tax liens recorded prior to the transfers and that Kindsfather was entitled to her homestead exemption under Iowa Code Section 561.16

against all income tax liens recorded after the transfers of the residence and two adjacent lots to her. (App. pp.32-33)

On April 13, 2017, the Iowa Department of Revenue filed its "Amended Preferred Claim" against the estate for $115,237.48. (App. p.52)

On January 17, 2018, Kindsfather filed her additional Affirmative Defenses asserting the Administrator's claims that the real estate was fraudulently transferred to her were barred by the application of the Statute of Limitations and adding her husband, Jason Randall, to the homestead exemption defense. (App. pp.34-38)

On April 5, 2018, Kindsfather filed her Motion in Limine and Brief. (App. pp.39-41)

On May 1, 2018, the parties filed their Joint Statement of Undisputed Facts. (App.pp.47-50)

Trial was held on May 15 and 16, 2018 before Judge Sean W. McPartland at the Linn County Courthouse in Cedar Rapids, Iowa.

On June 1, 2018, Kindsfather filed her Closing Argument and Request for Relief. (Not in Appendix)

On June 1, 2018, the Administrator filed her Post-Trial Brief. (Not in Appendix)

On October 31, 2018, the court filed its Findings of Fact, Conclusions of Law and Rulings adverse to Kindsfather. (App. pp.51-73)

On November 14, 2018, Kindsfather filed her Rule 1.904(2) Motion and Brief in Support thereof. (App. pp.74-76)

On November 16, 2018, the Administrator filed her Resistance to Rule 1.904(2) Motion. (App. pp.77-79)

On December 4, 2018, the Court filed its Ruling denying Kindsfather's Rule 1.904(2) Motion. (App. pp.80-81)

On December 26, 2018, Kindsfather filed her Notice of Appeal of the Findings of Fact, Conclusions of Law and Rulings entered October 31, 2018 adverse to Kindsfather and the Ruling denying Kindsfather's I.R.Civ.P. 1.904(2) Motion filed December 4, 2018. (Notice of Appeal, pp. 1-2; App. pp. 1-2). (App. pp.85-87)

STATEMENT OF FACTS

The Decedent, Frances O. Glaser ["Glaser"], was a resident of 718 Country Club Drive, Maquoketa, Iowa when he died intestate on September 9, 2014 in Maquoketa, Jackson County, Iowa. (Ruling, p. 1). (App. p.51)

Judy E. Bowling, ["Administrator" or "Bowling"] was a resident of Maquoketa, Iowa and was appointed the Administrator of the Frances O. Glaser Estate on April 14, 2015 in case No. ESPR020230 in Jackson County, Iowa. (App. p.51)

Glaser's intestate heirs included his cousins, Judy E. Bowling, Donna Smith, trustee of her Nims Family Trust, and Robert L. Smith, the owner of one-half of the Jackson County farm. (Estate Report and Inventory, filed January 25, 2016, p. 1). (Not in Appendix)

The Respondent, Sherry M. Kindsfather, ["Kindsfather"] is a resident of Maquoketa, Jackson County, Iowa. (Ruling, p. 9). (App. p.59)

Kindsfather met Glaser in 2003 and she had an intimate relationship with him for some time. (Ruling, p. 9) (App. p.59)

Kindsfather's previous husband, Randy Hicks ["Hicks"], filed for divorce in Clinton County on February 10, 2009. (Ruling, p. 10).(App. p.60)

On May 22, 2015, the State of Iowa, Iowa Department of Revenue, filed a Preferred Claim in Probate in the Estate claiming $106,897.83 in income taxes against Glaser's estate. (App. p.52)

On April 13, 2017, the Iowa Department of Revenue filed an Amended Preferred Claim in Probate claiming $114,237.48 of income taxes against the Estate. (Ruling, p. 2). (App. p.52)

On June 28, 2016, the Administrator filed a Motion to Set Aside Conveyance and Include Transferred Property in Estate Inventory. The Motion alleged that three lots in the City of Maquoketa, Iowa [lots 11, 12 and 13] were fraudulently transferred by Glaser prior to his death to Kindsfather. (Ruling, p. 2). (App. p.52)

The exhibits admitted at trial relevant to titles of the real estate that Glaser transferred prior to his death, with Kindsfather's objections to the Administrator's Exhibits regarding the transfer of Glaser's one-half ownership interest in a Jackson County farm *noted in italics,* are set forth in the following paragraphs.(Joint Statement, pp 1-4)(App. pp. 47-49)

On May 10, 2007, the Iowa Department of Revenue issued a Notice of Assessment against Glaser and which was recorded on January 7, 2008, as Document No. 08-75. (Joint Statement, p. 1, par. 1). (App. p.47) This lien

had a balance due of $14,283.85 at the time the Administrator filed her Motion. (Exhibit "B" attached to Motion). (Joint Stipulation of Uncontested Facts #1) (App. p.21) This Tax Lien had a balance due in the amount of $12,699.84 on September 6, 2011. (Claimant's Exhibit F). (App. p.100)

On January 7, 2008, Glaser executed a Warranty Deed to Kindsfather for Lot 12 of Hillside Acres Addition to the City of Maquoketa, Jackson County, Iowa which was recorded on January 8, 2008, as Instrument No. 08-88. (Exhibit P). (App. p.105)

On February 9, 2009, Kindsfather executed a Warranty Deed back to Glaser for Lot 12 of Hillside Acres Addition to the City of Maquoketa, Jackson County, Iowa which was recorded on February 9, 2009, as Instrument No. 09-450. (Exhibit A). (App. p.88)

On March 1, 2009, Glaser signed a Mortgage to Kindsfather for the alleged amount of $26,000.00 on Lot 11 in Hillside Acres Addition to the City of Maquoketa, Jackson County, Iowa which was recorded on August 25, 2011, as Document 11-3305. (Exhibit 7). (App. pp.179-185)

On March 15, 2009, Glaser signed a Mortgage to Kindsfather in the alleged amount of $18,000.00 on Lot 13 in Hillside Acres Addition to the City of Maquoketa, Jackson County, Iowa which was recorded on August

19, 2011, as Document 11-3260. (Administrator's Exhibit 6). (App. pp.173-178)

On or about January 5, 2010, Glaser delivered a Deed without Warranty to Kindsfather to Lot 12 in Hillside Addition, Maquoketa, Iowa. (Exhibit CC). (App. p.113) Kindsfather never recorded this Deed and had the original Deed with her at trial. (Vol II, p. 67)(App. p.281)

On June 3, 2010, Donna Smith, the Trustee of the Nims Family Trust executed a Court Officer Deed to the Jackson County farm one-half to *Frances Glaser* and one-half to her brother *Robert Smith*, as tenants in common, which was recorded as Document 10-2153 . (Exhibit 12). (App. p.206-208) *Kindsfather objected to this document on the grounds that said document is not relevant or material and it is beyond the pleadings, and is barred by the statute of limitations. (Ruling, p. 5)* (App.p.55). (Vol I, p. 44) (App. p.247)

On September 9, 2011, Glaser executed a Warranty Deed for his one-half interest in the Jackson County Farm to Judy Shreve ["Shreve"] which was recorded as Document No. 11-3494. (Exhibit 8). (App. p.186-187) K*indsfather objected to this document on the grounds that said document is not relevant or material and it is beyond the pleadings, and is barred by the statute of limitations. (Ruling, p. 6).* (App. p. 56) (Vol I, p. 171) (App. p.261)

On February 7, 2012, the Iowa Department of Revenue recorded a Notice of Tax Lien against Frances O. Glaser as Document No. 12-520. The balance on the tax lien was the amount of $22,324.38 and was for tax years 2001, 2002 and 2004. (Exhibit 15). (App. pp. 211)

On September 7, 2012, Shreve executed a Warranty Deed to the Jackson County Farm to Kindsfather which was recorded on September 19, 2012, as Document No. 12-3968. (Exhibit 9). (App. pp. 188-190) *Kindsfather objected to this document on the grounds that said document is not relevant or material and it is beyond the pleadings, and is barred by the statute of limitations.* (Vol I, p. 181)(Ruling, p.6) (App. p.56)

On September 7, 2012, the Internal Revenue Service recorded its Notice of Federal Tax Lien against Glaser as Document No. 12-3750. The tax lien was for assessments in the amount of $88,581.48 for tax years 2005, 2006, 2007, 2008 and 2009. Report of Title (Exhibit A). (App. pp.89-90) *Kindsfather objected because this federal tax lien is not relevant or material to the issues in this lawsuit and the United States of America, Internal Revenue Service is not a party to this lawsuit. (*Ruling, p.6) (App. p.56)

On November 19, 2012, Glaser executed a Quit Claim Deed to Kindsfather to Lot 11 in Hillside Addition, Maquoketa, Iowa which was

recorded on December 28, 2012, as Instrument No. 12-5543. (Exhibit 11). (App. pp.200-205)

On November 19, 2012, Glaser executed a Quit Claim Deed to Kindsfather to Lot 12 in Hillside Addition, Maquoketa, Iowa which was recorded on December 28, 2012, as Instrument No. 12-5544. (Exhibit N). (App. p.101-102)

On November 19, 2012, Frances Glaser executed a Quit Claim Deed to Kindsfather to Lot 13 in Hillside Addition, Maquoketa, Iowa which was recorded on December 28, 2012, as Instrument No. 12-5545. (Exhibit O). (App. p.103-104)

On February 28, 2013 Johnny Shreve, Judy Shreve's husband, executed a Quit Claim Deed to Kindsfather for the Jackson County farm which was recorded on March 7, 2013 as Instrument No. 13-966. (Exhibit 13) (App. p.209-210) *Kindsfather objected to this document on the grounds that said document is not relevant or material and it is beyond the pleadings, and is barred by the statute of limitations. (Ruling, p. 6).* (Vol I, p. 169) (App. p.260)

On November 1, 2016 Kindsfather and her husband, Randall, recorded a *Plat of Homestead* as Document No. 16-4010 stating their claim to a homestead exemption under Iowa Code section 561.16 for their home

located on Lot 12 and addressed at 612 Country Club Drive, Maquoketa, Iowa. (Exhibit D) (App. pp.98-99) (Tr.p. Vol. II, p. 46). (App. p.278)

Kindsfather moved into the house located on Lot 12 in February, 2009 and she has lived in and occupied said house as her home continuously from February, 2009 until the present. (Tr.p. Vol. II, p. 66 and p.91). (App. p.280 and p.289)

Kindsfather married Jason Randall ["Randall"] on November 20, 2012.They have lived together on Lot 12 as their homestead since the date of their marriage to the present. (Claimants Exhibit KK)(App.p.114) (Tr.p. Vol. II, p. 38, p. 40 and p. 65). (App. p.274 and p.279)

Kindsfather and Randall have occupied the two adjacent Lots 11 and 13 as part of their homestead after Glaser transferred the properties to Kindsfather on December 28, 2012. (Tr.p. Vol. II, p. 88-89). (App. p.286-287)

ARGUMENT

I. The trial court erred when it set aside the Warranty Deed for the Jackson County farm from Glaser to Shreve [Exhibit 8] because Shreve was an indispensable party to the issue of whether the Warranty Deed could be set aside due to Glaser's fraud on creditors and Shreve's rights under the recorded Warranty Deed from Glaser could not be determined by the trial court adversely to her when she was not a party to the lawsuit.

A. Scope and Standards of Review.

The Administrator's Motion to Set Aside Conveyance and Include Transferred Property in Estate Inventory ["Administrator's Motion"] was an equitable action under Iowa Code section 633.33 and 633.368.

The appellate court's review is *de novo*. Iowa R. App. P. 6.4.

B. Preservation of Err.

Kindsfather preserved the issue of Shreve being an *indispensable party* to an action involving the transfer of the farm from Glaser to Shreve in her pretrial Motion in Limine filed April 5, 2018 (Motion in Limine pp. 2-3)(App.p.40-41) and in her post-trial Closing Argument filed June 1, 2018, Argument III, pp. 13-20.

The defect of an indispensable party in an equitable action who is indispensable to the final adjudication of the rights of the parties is

jurisdictional and *can be raised for the first time on an appeal.* See, *Tod v. Crisman*, 123 Iowa 693, 699, 99 N.W. 686, (Iowa 1904).

Shreve did not become an indispensable party until the Administrator sought to add the claim to the recovery of the farm to the case against Kindsfather. The Administrator sought to avoid adding Shreve as a party to the case because any claim that Glaser had fraudulently conveyed title to her was barred by the statute of limitations.

C. Shreve, as the *first transferee* of the farm, was an indispensable party to the Administrator's action seeking to set aside the Warranty Deed [Exhibit 8] from Glaser transferring his interest in the Jackson County farm to her and the trial court could not set aside said Warranty Deed to Shreve when Shreve was not a party to the Administrator's lawsuit.

Judy Shreve, as *first transferee* of the farm, was an indispensable party under I.R.Civ.P. 1.234(2) to any action involving title to the one-half interest in the farm because her interest in the property would be "necessarily … inequitably affected by a judgment rendered between those before the court." See, *Sear v. Clayton County Zoning Bd. of Adjustment*, 590 N.W. 2d 512, 517 (Iowa 1999) and *Wright v. Standard Oil Co.*, 234 Iowa 1241, 15 N.W. 275, 276 (Iowa, 1944)

I.R.Civ.P. 1.234(3) provides that: "If an indispensable party is not before the court, it shall order the party brought in."

The trial court avoided this issue when it erroneously ruled that "It appears Shreve never really had an interest in the farm, except on paper, as Kindsfather testified Shreve was merely holding it for the benefit of Kindsfather." (Ruling, p. 15). (App. p.65).

Kindsfather disputed that she had control over this transaction between Glaser and Shreve. Kindsfather's testified at trial that she had nothing to do with the transfer from Glaser to Shreve and that Glaser was free to do whatever he wanted to do with the farm. (Tr.p. Vol. II, pp. 5-8). (App.p.264-267) Kindsfather further testified that this transaction was between Glaser and Judy Shreve and that she had no control over it. (Tr.p. Vol. II, p. 13). (App. p.268)

However, the trial court missed the real issue here which was whether this case could proceed to a judgment voiding first the Warranty Deed from Glaser to Shreve and subsequently voiding the Warranty Deed from Shreve to Kindsfather. The Warranty Deed to Shreve, once recorded, could not be voided without Shreve being a party to the lawsuit. The Warranty Deed from Shreve to Kindsfather could not be voided if Shreve's Warranty Deed remained valid.

The trial court concluded that "Shreve was not and is not an indispensable party in connection with these matters. (Ruling, p. 15). (App. p.65). The trial court ignored that the Warranty Deed to Shreve had been recorded at the Jackson County Recorder's Office. (Exhibit 8)(App.p.186-187).

The Iowa Supreme Court held that when a decedent had previously conveyed land to his son, who was not a party to the proceedings contesting the title, the son was not bound by the court proceedings and that the Administrator was not in a position to challenge the recorded Deed from the decedent to the son. *Corbin v. McAllister (In re Brigham's Estate,* 144 Iowa 71, 81, 120 N.W. 1054, 1058 (Iowa 1909).

Shreve's rights to the farm after the Warranty Deed [Exhibit 8] from Glaser to her was recorded could not be impaired in this action solely against Kindsfather when Shreve was not a party.

The trial court should have ordered the Administrator to amend her pleadings prior to trial to add Shreve as an indispensable party. See, *Gunner v. Town of Montezuma*, 228 Iowa 581, 293 N.W. 1, 4 (Iowa 1940) and *Smith v. Piper*, 118 Iowa 363, 365, 92 N.W. 56, 56 (1902). Failure to do so is fatal

to the Administrator's judgment voiding the Warranty Deed to Shreve and the subsequent Warranty Deed from Shreve to Kindsfather.

D. The trial court abused its discretion when it incorrectly granted the Administrator's Motion to Amend to add a claim to set aside the farm because the proffered amendment did not request the court to add Judy Shreve as an indispensable party to the claim seeking to set aside the deed transferring the farm to her.

The grantor of a general warranty deed promises to defend all claims. The covenant of warranty in a general warranty deed "constitutes an agreement by the grantor that upon the failure of the title which the deed purports to convey, either for the whole estate or part only, the grantor will pay compensation for the resulting loss." *Kendall v. Lowther*, 356 N.W. 2d 181, 189-90 (Iowa 1984).

The court order voiding Glaser's Warranty Deed to Shreve breaches warranties of title that Shreve made in her subsequent Warranty Deed to Kindsfather filed September 19, 2012 as Document No. 12-3968. (Exhibit 9). (App. pp. 188-190)

Shreve was prejudiced by the trial court's ruling allowing the amendment. Shreve was not given the opportunity to defend the warranties in her Warranty Deed to Kindsfather and granting the Administrator's Motion to Amend *circumvented* the requirement that Shreve be named and

served as an indispensable party to the action to set aside the Warranty Deed for the farm from Glaser to her. The trial court's action in setting aside the Warranty Deed to Shreve effectively voids her subsequent Warranty Deed to Kindsfather. (Exhibit 9). (App. pp.188-190).

The trial court's failure to add Shreve as an indispensable party results in its subsequent ruling voiding of the Warranty Deed from Shreve to Kindsfather being in err. The Warranty Deed from Shreve to Kindsfather cannot be found void if the Warranty Deed from Glaser to Shreve has not previously been set aside.

II. The trial court erred when it failed to rule that the Administrator was barred by the "Doctrine of Clean Hands" from obtaining a court order voiding the Warranty Deeds Glaser to Shreve and from Shreve to Kindsfather.

A. Scope and Standards of Review.

The Administrator's Motion was an equitable action under Iowa Code section 633.33 and 633.368. The Appellate court's review of this issue is *de novo*. Iowa R. App. P. 6.4.

In equity cases, especially when considering the credibility of witnesses, the appellate court gives weight to the findings of the district court, but is not bound by them. Iowa R. App. P. 6.14(6)(g). See, *Coyle v. Kujacznski*, 759 N.W.2d 657, 658 (Iowa App., 2008).

B. Preservation of Error.

Kindsfather raised the issue of equitable relief for appellate review in her Response and Resistance to Administrator's Motion in which she requested general equitable relief from the court. (Response and Resistance, p. 6). (App. p.31) See, *Meyers v, Smith*, 208 N.W. 2d. 919, 922-923 (Iowa. 1973).

Kindsfather further preserved the issue of the Administrator being barred from obtaining an order voiding Glaser's deeds to Shreve and Kindsfather by raising the Doctrine of Clean Hands in her Final Argument filed June 1, 2018. (Closing Argument I, pp. 2-7) and in her I.R.Civ.P. 1.904(2) Motion, Argument I, p.2 (App. p.75)

"The clean hands maxim need not be pleaded; the district court may apply the maxim on its own motion." *Opperman v. M. & I. DEHY, INC.*, 644 N.W.2d 1, 6 (Iowa, 2002) and *Myers v. Smith*, 208 N.W. 2d 919, 921 (Iowa, 1973), and *Sisson v. Janssen*, 244 Iowa 123, 5 N.W. 2d 30,35 (952).

C. The trial court erred when it entered an order voiding the Deeds transferring real estate to Kindsfather and Shreve because the Administrator's claim to these properties is barred by the Doctrine of Clean Hands.

In the case of *Shaw v. Addison*, 239 Iowa 377, 28 N.W.2d 816, 827 (Iowa, 1947), the Iowa Supreme Court held that the *Administrator was*

barred by the equitable doctrine of "Clean Hands" from recovering for the benefit of the decedent's heirs the real estate fraudulently transferred by the decedent to avoid paying Iowa income taxes.

The Iowa Supreme Court stated:

> It is the general rule that, when a conveyance is made solely to prevent a creditor of the grantor from collecting the amount of a judgment that might be recovered against him, a court of equity will not grant relief from such fraudulent conduct, *on behalf of either the grantor, or his heirs or assigns*. [citations omitted]

Shaw v. Addison, 28 N.W.2d at 827.

In *Sisson v. Janssen*, 244 Iowa 123, 56 N.W.2d 30, 35 (Iowa, 1952), the Iowa Supreme Court stated:

> Quite recently, in *Shaw v. Addison*, 239 Iowa 377, 395-398, 28 N.W.2d 816, 826, we invoked it in a case in which a daughter, as administratrix and sole heir of her father, sought to recover from a grantee property her father had conveyed 'in order to avoid the lien of a deficiency judgment.' [244 Iowa 133] In that case, 239 Iowa at page 395, 28 N.W.2d at page 825, it was also contended some of the property was conveyed 'to escape income tax.' We said: 'Plaintiff cannot secure a decree of reconveyance in a court of equity on such a theory', citing authorities; and again, ' *The transfer which has for its object and purpose the evasion of taxation is analogous to transfers to defraud creditors * * *. In both cases the parties are in pari delicto and no relief will be granted the transferor in equity* * * *.* The equitable maxim 'he who comes into equity must come with clean hands' governs the court's action.' [*italics added*].

In *Opperman v. M. & I. DEHY, INC.*, 644 N.W.2d 1 (Iowa, 2002), the Iowa Supreme Court stated:

> The equity maxim of clean hands expresses the principle that where a party comes into equity for relief he or she must show that his or her conduct has been fair, equitable, and honest as to the particular controversy in issue. A complainant will not be permitted to take advantage of his or her own wrong or claim the benefit of his or her own fraud or that of his or her privies….
>
> Courts have generally applied the maxim in situations where there has been a conveyance to hinder, delay, or defraud creditors. See, e.g., Shaw v. Addison, 239 Iowa 377, 395-99, 28 N.W.2d 816, 826-27 (1947) (where decedent during his lifetime transferred farm to his sister to escape a possible deficiency judgment he was fearful would be rendered against him in foreclosure action involving another farm, conveyance was in fraud of creditors, and *would not be set aside upon suit by administratrix of his estate*). [*italics added*].

Opperman v. M. & I. DEHY, INC., 644 N.W.2d at p. 6.

> In such situations, a court of equity will leave the parties "in the position in which they have placed themselves, refusing affirmative aid to either of the fraudulent participants." Shaw, 239 Iowa at 398, 28 N.W.2d at 827… This applies "not only as to the original parties to the fraudulent transaction, but *also as to their heirs and all other persons claiming under them.*" Shaw, 239 Iowa at 398, 28 N.W.2d at 827. [*italics added*]

Opperman v. M. & I. DEHY, INC., 644 N.W.2d at p. 7.

When the trial court found Glaser fraudulently deeded the house and two lots to Kindsfather and the Jackson County farm to Shreve, these factual findings resulted in the Doctrine of Clean Hands barring the Administrator and from obtaining a court order voiding these deeds to Shreve and Kindsfather bringing these properties back into the estate. (Ruling, p. 19)(App.p 69) *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011).

The trial court erred when it ruled that because the Administrator personally did not have unclean hands, the Doctrine of Clean Hands did not apply to this case. (Ruling, p. 11, third full par). (App.p.61)

The trial court, *referring only to the transfer of the lots*, stated that: "Finally, even to the extent that Kindsfather was not complicit in or cooperative with Glaser in his intent to defraud, the Court does not find or conclude that equitable notions or authorities require or guide the Court to prefer Kindsfather to the undisputed creditors of Glaser who were defrauded. (Ruling, section C., p. 20). (App.p 70). The trial court should have found that Glaser's Administrator was barred by the Doctrine of Clean Hands from obtaining an order voiding Glaser's deeds to Kindsfather and Shreve. See, *Shaw v. Addison*, 239 Iowa 377, 28 N.W.2d 816, 827 (Iowa, 1947) and *Baur v. Baur Farms, Inc.*, 832 N.W. 2d 663, 668-669 (Iowa 2013).

III. The trial court erred when failed to rule that the Administrator's claim that Glaser fraudulently transferred the farm to Shreve in 2011 was *beyond the scope* of the Administrator's original pleading and that the trial court lacked *jurisdiction of the case* to consider this issue.

A. Scope and Standards of Review.

The Administrator's Motion was an equitable action under Iowa Code section 633.33 and 633.368.

The scope of review of this issue is *de novo*. Iowa R. App. P. 6.4.

B. Preservation of Err.

Kindsfather preserved the issue that the transfer of the farm from Glaser to Shreve was beyond the scope of the pleadings in Kindsfather's Motion in Limine, pp. 2-3 (App. p.40-41) and Closing Argument filed June1, 2018, III, pp. 13-20.

Kindsfather also objected to the deeds to the farm as being beyond the scope of the pleadings in writing. (Parties' Joint Stipulation of Uncontested Facts paragraph's 6, 9, 11, and 12). (App. pp.47-50) and orally at trial. (Vol. I, p. 44, p. 169, p.171, and p.181) (App. pp.247, 260, and 261)

The Iowa Supreme Court can raise the issue of whether the district court had *jurisdiction of the case* upon its own motion. *City of Des Moines v. Des Moines Police Bargaining Unit Association*, 360 N.W. 2d 729, 730 (Iowa 1985).

C. The trial court erred when it applied the wrong test in determining whether the issue of the transfer of the farm was *beyond the scope of the pleadings.*

The Administrator's Motion states:

1. That on November 19, 2012, the Decedent, Frances O. Glaser ("Decedent"), executed three (3) quit claim deeds transferring and

conveying his interest in certain real property ("Property") to Sherry M. Kindsfather ("Kindsfather"). Consideration for the transfers and conveyances was listed on the conveyance documents as One ($1.00) Dollar. See Exhibit "A". (App. p.9).

Exhibit "A" consisted solely of copies of three Quitclaim Deeds for three city lots from Glaser to Kindsfather dated November 19, 2012 and recorded December 28, 2012. (App. pp.14-19)

The trial court found that the transfer of the farm was *beyond the scope of the pleadings* when it stated:

> *"It is quite clear that the Administrator's original Motion to Set Aside Conveyances referred specifically to three quit claim deeds involving Lots 11, 12 and 13, but did not specifically address or request relief related to the conveyance of the Jackson County farm." (Ruling, p. 13).*(App.p.63)

The Iowa Court of Appeals has held that:

> The jurisdiction of a court can ordinarily be exercised only within the scope of the pleadings, except when new issues are raised by the evidence without objection....A hearing on a final report does not invoke the court's jurisdiction to actually adjudicate title to the property....We conclude the probate court improperly set aside the predeath transfers of property at the hearing."

Estate of Randeris v. Randeris, 523 N.W. 2d 600, 604 (Iowa App. 1994).

The trial court applied the *wrong test* when it held in err:

> The Court finds and concludes that Kindsfather's contention that the Administrator's and the State's claims to fraudulent conveyances involving the Jackson County farm were beyond the scope of the pleadings *is not supported by the facts in this matter*. Moreover, to the extent that there was any question of notice of such claims to Kindsfather, the Court grants the motion to amend to include such

claims to conform to the proof at trial. (Ruling, p. 13). (App.p.63) [italics added].

The *correct test* for determining whether an issue raised at trial is *beyond the scope of the pleadings* is a legal *jurisdictional* test and is not an evidentiary test. Because the trial court found that the Administrator did not state any facts in the Administrator's original Motion or request relief regarding the transfer of the farm, the trial court did not have *jurisdiction of the case* regarding the transfer of the farm because this transfer was beyond the scope of the pleadings.

In Kindsfather's Motion in Limine, Kindsfather specifically alerted the trial court to this jurisdictional issue and advised the trial court prior to trial that she was not consenting to a trial on the issue regarding the transfer of the farm because it was beyond the scope of the pleadings. (Motion in Limine, pp 2-3). (App. p.40-41)

The trial court erred when it did not dismiss the administrator's new claim asserted at the conclusion of the trial involving the transfer of the farm because it was *beyond the scope of the pleadings* and the trial court *lacked jurisdiction of the case* to consider this claim. (Ruling, p. 21)(App. p.71)

The trial court circumvented Kindsfather's beyond the scope of the pleadings defense by granting the Administrator's post-trial Motion to

Amend, but this order could not cure the trial court's lack of jurisdiction of the case regarding the transfer of the farm under the Administrator's original pleading after the Defendant, Kindsfather, had rested her case.

The Administrator's new claim regarding the transfer of the farm should have been dismissed and all the evidence regarding the transfer of the farm should have been stricken from the record as *being beyond the scope of the pleadings.*

IV. The trial court erred when it ruled that that the Administrator's original pleadings met *notice pleading* standards regarding the Administrator's new claim that Glaser fraudulently transferred the farm to Shreve.

A. Scope and Standards of Review.

The Administrator's Motion was an equitable action under Iowa Code section 633.33 and 633.368.

The scope of review of this issue is *de novo*. Iowa R. App. P. 6.4.

B. Preservation of Err.

When the Administrator's counsel referred to the transfer of the farm at the pretrial conference, Kindsfather filed a pretrial Motion in Limine objecting to the Administrator offering evidence regarding the transfer of the

farm was *beyond the scope of the pleadings*. (Motion in Limine, pp. 2-3). (App. p.40-41)

During the course of the trial, Kindsfather objected to all the Administrator's Exhibits concerning the transfer of the farm. (Joint Stipulation of Uncontested Facts, p.1-3, par. 6, 9, and 11) (App. p. 47-49)

Kindsfather preserved this issue for review when she raised it in her Motion in Limine filed April 5, 2018, p. 2 (App. p.40) and Closing Argument III, pp.13-20

C. The trial court erred when it held that the original pleading gave Kindsfather notice that the Administrator claimed that the transfer of the farm from Glaser to Shreve was fraudulent.

1. The transfer of the farm was clearly not part of the *incident pled* by the Administrator in her original pleading.

The Administrator's original pleading did not claim that the farm had been fraudulently transferred and did not name Judy Shreve, the *first transferee* of the farm, as an indispensable party and it did not refer to the Warranty Deed from Glaser to Shreve or the date of the transfer or include the legal description of the farm or request relief regarding the farm against either Shreve or Kindsfather. (Exhibit 8). (App. pp.186-187)

The trial court found that the transfer of the farm was beyond the scope of the pleadings when it found that the original pleadings "did not

specifically address or request relief related to the conveyance of the Jackson County farm." (Ruling, p. 13). (App. p.63)

2. The Administrator's pleading did not apprise Kindsfather of the "incident out of which the claim arose and the general nature of the action regarding the transfer of the farm".

Under notice pleading rules, a pleading "is sufficient if it apprises of the incident out of which the claim arose and the general nature of the action." *Haugland v. Schmidt*, 349 N.W. 2d 121, 123 (Iowa 1984).

Black's Law Dictionary defines "incident" as follows: "Incident. This word, used as a noun, denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing, called the 'principal' ".

The transfer of the Jackson County farm to Shreve on September 9, 2011 was clearly a *separate "incident"* from the transfers of the house and two lots on December 28, 2018 to Kindsfather. The two transactions lacked identities. The recipients of the deeds were different persons. The transactions were over a year apart. The legal descriptions describe two separate properties which were transferred.

Notice pleading allows the Administrator to assert legal theories arising from the facts pled without specifically pleading the legal theory of

recovery. See, *First Security Bank & Trust Company v. King*, No. 6-1013/05-2039(Iowa App. 1/31/2007) (Iowa App., 2007), p. 3.

However, notice pleading does not fill in additional facts about an additional "incident" which the Administrator did not plead – that is the 2011 transfer of the farm to Shreve.

Under the Administrator's Motion, Prayer for Relief, the trial court only had *jurisdiction of the case* to consider *the transfer of property to* ***Kindsfather*** within the three years prior to Glaser's death. (Administrator's Motion p.5, Prayer for Relief). (App. p.13). *The only properties that Glaser conveyed to Kindsfather in the three years before his death were the house and two adjacent lots in Maquoketa.* [Exhibits N, O and 11]

The Administrator's pleadings did not identify the farm or name Shreve as a Defendant and Shreve was not served an Original Notice or a copy of the Administrator's Motion. So, the court had no jurisdiction over either the res (the farm property) or Shreve.

The minimal requirements of due process require a service of a written pleading stating some facts directly relating to the alleged fraudulent transfer of the farm in order to give Kindsfather a meaningful opportunity to

defend against this claim. See, *Hancock v. City Council of Davenport*, 392 N.W. 2d 472, 478 (Iowa 1986).

The Administrator's original pleading did not give Kindsfather fair notice of the "incident out of which the claim arose and the general nature of the action" regarding the transfer of the farm and was *beyond the scope of the pleadings.*

The Administrator's post-trial amendment to conform to the proof did not cure the fact that the amendment was filed after the statute of limitations expired on the deed to the farm from Glaser to Shreve. Because the Administrator's original pleading did not comply with notice pleading standards, the Administrator's claim to recover the farm was beyond the scope of the pleadings and was barred by the Statute of Limitations.

V. The trial court abused its discretion when it granted the Administrator's post-trial oral Motion to Amend to add a new claim that the Warranty Deed from Glaser to Shreve of the Jackson County farm was fraudulent.

A. Scope and Standards of Review.

The appellate court's review the district court's ruling on a motion for leave to amend is for an abuse of discretion. See *Holliday v. Rain & Hail L.L.C.*, 690 N.W.2d 59, 63 (Iowa 2004).

The appellate court will reverse the trial court's refusal to allow amendment of a petition to conform to the proof only upon a showing of a clear abuse of discretion. *Tomka v. Hoechst Celanese Corp.*, 528 N.W.2d 103, 108–09 (Iowa 1995).

B. Preservation of Error.

The issue regarding whether Glaser fraudulently transferred the farm was *not tried by the express or implied consent of Kindsfather.* Kindsfather objected to the Administrator's Exhibits 8, 9, 12 and 13 on the grounds that these exhibits were not relevant to the issue pleaded, were beyond the scope of the pleadings, and that the claim regarding the transfer of the farm was barred by the statute of limitations. (Motion in Limine, pp. 2-3). (App. p.40-41) (Ruling pp. 5-6 and p. 13). (App. p.55-56 and p.63)

Kindsfather orally resisted the Administrator's oral Motion to Amend made on May 16, 2018 by raising all these same objections and she reserved the right to argue this issue further in her Final Argument. (Tr.p. Vol. II, pp. 112 - 113). (App. pp.294-295) (Opinion, p. 13). (App. p.63)

The trial court held that:

> Kindsfather properly objected, both prior to trial and during the course of evidence at trial, to the Court's receipt of evidence related to transfer of the Jackson County farm. Kindsfather's objections

> included objection to the Administrator's motion to amend to conform to the proof made at the conclusion of the evidence. The Court finds and concludes that Kindsfather has properly and adequately preserved the issue. (Ruling, p. 13, second full par.). (App. p.63)

C. The allowance of the oral Motion to Amend materially changed the issues for trial and substantially altered Kindsfather's defense and was prejudicial to Kindsfather's defense at the trial which had just concluded.

At the conclusion of the trial, after both sides had rested their cases, the Administrator made an oral Motion to Amend her pleadings to conform to the proof requesting the court to include a new claim regarding voiding the transfer of the farm to Shreve to the Administrator's original pleading against Kindsfather. (Tr.p. Vol. II, p. 112). (App. p.294)

The Administrator's oral motion was a late filed amendment to the pleadings which substantially changed the issues for trial and should not have been allowed. See, *Tomka v. Hoechst Celanese Corp.*, 528 N.W. 2d 103, 108 (Iowa 1995) and *Doerring v. Kramer*, 556 N.W. 2d 816, 819 (Iowa 1996).

In *Workman v. Workman* (*In re Estate of Workman*), 903 N.W. 2d 170 (Iowa 2017), the Iowa Supreme Court held:

> On the second issue, we find no abuse of discretion. The district court correctly determined that this last-minute amendment would have broadened the issues and the proof. Also, this case falls within our precedent upholding denials of motions to amend under Iowa Rule of Civil Procedure 1.457 when the motion is based on facts the movant

> knew or should have known before trial. *See, e.g.*, *Meincke v. NW. Bank & Tr.p. Co.* , 756 N.W.2d 223, 229 (Iowa 2008). *Workman v. Workman*, 903 N.W. 2d at 172.
>
> In examining the denial of a motion to amend to conform to the proof, we must consider "whether allowance of the amendment to conform to proof by the trial court materially changed the issues or substantially altered the defenses." *Beneficial Fin. Co. of Black Hawk Cty. v. Reed* , 212 N.W.2d 454, 456 (Iowa 1973). One indicator of substantial change to the issues may be prejudice or unfair surprise to the opposing party. [citations omitted].... *Workman v. Workman*, 903 N.W. 2d at 178.
>
> If the theory relied on to prove the proposed amended claim "var [ies] materially" from the facts relied upon to prove the existing claim, then the proposed amendment is deemed to substantially change the issues. *Smith v. Village Enters., Inc.,* 208 N.W.2d 35, 37–38 (Iowa 1973).... *Workman v. Workman*, 903 N.W. 2d at 178.
>
> The trial court clearly abused its discretion when it allowed the

Administrator to amend her original pleading to add a new claim regarding the transfer of the farm to Shreve. By granting this Motion to Amend, the trial court allowed the Administrator to *circumvent* Kindsfathers' defenses and allowed the Administrator to: (a) have exhibits admitted which had been objected to (Tr.p. Vol. I, p. 44) (App. p.247) and were *not relevant* to the transfer of the house and two lots in Maquoketa, and, (b) offer evidence regarding the transfer of the farm which was *beyond the scope of the pleadings* (Administrator's Exhibits 8, 9, 12 and 13), and, (c) substantially changed the issues that had already been tried, and, (d) denied Kindsfather the opportunity to call potential witnesses regarding the transfer of the farm

and the opportunity to obtain an appraisal of the farm, (e) *circumvent the bar of the statute of limitations*, and, (f) proceed to judgment without adding Shreve as an *indispensable party*.

D. The Administrator should have amended her pleadings prior to trial because she knew or should have known about the claim concerning Glaser's transfer of the farm to Shreve for more than a year before trial and she had constructive notice of the recording of the deed transferring the farm to Shreve.

Kindsfather's deposition was taken more than a year before the trial. (Opinion p. 10). The trial court found that the Administrator had asked Kindsfather detailed questions about the transfer of the farm in Kindsfather's deposition. (Exhibit 21, pp 78-95). (Opinion p. 13). (App.p.63).

I.R.Civ.P. 1.457 does not require the district court to grant a motion to amend "*when the movant seeks to amend based upon trial testimony that the movant knew or should have known about beforehand." Allison-Kesley Ag CTr.p., Inc. v. Hildebrand*, 485 N.W.2d 841, 846 (Iowa 1992); *Baysden v. Hitchcock*, 553 N.W. 2d 901, 904-905 (Iowa App. 1996), and *Mora v. Savereid* , 222 N.W.2d 417, 422–23 (Iowa 1974) and *Workman v. Workman*, 903 N.W. 2d at 178-179.

The trial court abused its discretion when it granted the late filed Motion to Amend to add a new issue that the Administrator had known about for over a year before trial.

E. The proffered Amendment should not have been approved by the trial court because the oral amendment did not state all of the legal elements of the new claim regarding the transfer of the farm.

The Administrator's oral Motion to Amend did not name Shreve as a defendant or legally describe the farm or request that the Warranty Deed [Exhibit 8] from Glaser to Shreve be voided. (Tr.p. Vol. II, p. 113) (App.p.295). Consequently, the trial court had no jurisdiction to void the Warranty Deed to Shreve because voiding this Warranty Deed was not requested in the Administrator's oral Motion to Amend to Conform to the Proof. (Tr.p. Vol. II, p. 113).(App.p.295).

F. The Administrator's oral Motion to Amend was not supported by clear and convincing evidence of each factual element of the new claim regarding the transfer of the farm in the trial record.

1. The proposed Amendment was not actually supported by substantial evidence in the trial record that Glaser committed fraud when he transferred the farm to Shreve on September 9, 2011.

In *Workman v. Workman*, 903 N.W. 2d at 175, the Iowa Supreme Court stated:

> The amendment allowed by the court resulted in the consideration of a new cause of action. *Our first concern is whether the proposed new cause of action is actually supported by the proof offered.* If the

> plaintiff has not adduced substantial evidence in support of each element of the proposed cause *of action, the amendment* does not actually conform to the proof..[citation omitted]. Consequently, we must examine the facts in the record to determine if there is substantial evidence of each component of the alleged tort. *Steckelberg v. Randolph*, 448 N.W.2d 458, 460-461 (Iowa, 1989).

a. There is <u>not</u> clear and convincing evidence in the record proving Glaser's alleged *fraudulent intent* in 2011 when he transferred the farm to Shreve.

The only evidence in the record regarding *Glaser's intention* in 2011 was that Glaser hated his biological family. (Tr.p. Vol. II, p. 85 and p. 87). (App. p.284 and p. 285) Glaser had had a dispute with his cousins over money in their uncle Robert Nims' estate which resulted in Glaser's hard feelings towards his cousins. (Ruling, p. 7). (App. p.57) Glaser did not want anything from his estate to go to his biological family. (Tr.p. Vol. II., p. 87 and p. 104). (App. p.285-293). Glaser made every effort to insure that his cousins would not receive anything from his estate. (Tr.p. Vol. II, p. 85). (App. p.284)

b. There was <u>not</u> clear and convincing evidence in the record that Glaser became *insolvent* after he transferred the farm to Shreve.

Under Iowa law, *solvency was to be determined as of the date of the transfer* of the farm to Shreve in 2011, and not the date of Glaser's death. *Grimes Sav. Bank v. McHarg*, 224 Iowa 644, 276 N.W. 781, 784 (Iowa 1937).

There is substantial evidence in the record showing that Glaser owned significant assets besides the farm in 2011 and that the transfer of the farm did not cause Glaser to became insolvent after he transferred the farm to Shreve. (Tr.p. Vol. II, p. 81 and p. 100) (App. p.283 and p. 291)

The trial record proves that in 2011 Glaser was not insolvent:

1. Glaser had two pensions which were paying him at least $6,000 per month. (Tr.p. Vol. II, p. 81). (App. p.283)

2. Glaser owned his home at 718 Swift Court, Maquoketa, Iowa. This property was of substantial value. (Exhibit 5). (App. pp.157-172) (Tr.p. Vol. II. p. 100)(App.p.291)

3. The equity in Glaser's house on December 28, 2012 was at least $37,000. (Tr.p. Vol II, pp. 80). (App. p.282) On cross-examination by the assistant attorney general, Kindsfather testified that she believed Glaser had closer to $75,000 to $100,000 of equity in 718 Swift Court. (Tr.p. Vol. II, p.100). (App. p.291)

4. Glaser still owned 612 Country Club Dr., Maquoketa, Iowa, the house that Kindsfather was living in and the two lots in the City of Maquoketa adjacent the house. On January 1, 2012, the house and two lots had assessed values totaling $235,700.00 with no mortgages on them.

(Exhibits 16 and 17). (App.pp. 212-214 and pp. 215-218) and (Exhibits A and B). (App. pp.88-91 and pp. 92-95). The Jackson County assessed value for the house on January 1, 2018 was $233,200.00. (Exhibit A,p.5) (App.p 91)

If the Administrator's evidence is not clear and convincing that the 2011 transfer of the farm to Shreve resulted in Glaser becoming insolvent as the result of the transfer, the Administrator's claim of fraudulent transfer fails as a matter of law. See, *Schlichte v. Schlichte*, 858 N.W.2d 36 (Table), No. 13-1713, (Ct of Appeals decision dated October 15, 2014) pp. 1-2.

c. There was not clear and convincing evidence in the record regarding *Glaser's debts in 2011*.

The Administrator testified that she had no knowledge of Glaser's financial affairs and had no knowledge of who his creditors were or how much he owed each creditor when the transfers occurred. (Tr.p. Vol. I, p. 58 and 60). (App. p.248 and p.250)

d. On September 9, 2011, the date he transferred the farm to Shreve, Glaser was current with his payment plan with the Iowa Department of Revenue for his back taxes.

Exhibit F clearly proves that Glaser had worked out a ***payment plan to pay his back taxes*** to the Iowa Department of Revenue prior to transferring the farm to Shreve. (App. p.100). Glaser had substantially

reduced the tax lien amount from when the when the lien was first filed in 2008. The Tax Liability Payment Plan Notice dated September 6, 2011 advised Glaser that his balance on the plan was $12,699.84 and that his next payment in the amount of $100.00 was due September 6, 2011. (Exhibit F). (App. p.100). (Tr.p. Vol.I, p. 30-31) (App.pp.244-245).

The records of the Iowa Department of Revenue showed that Glaser was current on making payments on this payment plan through February 2012 when he paid a $100.00 payment, six months after the transfer of the farm to Shreve. (Tr.p. Vol. 1, p. 36) (App.p.246).

Proof of insolvency, once established, though presumed to continue forwards, *ordinarily does not relate backwards*. *Corbin v. McAllister (In re Brigham's Estate,* 144 Iowa 71, 80, 120 N.W. 1054, 1058 (Iowa 1909).

The transfer of the farm should not have been voided because Administrator did not prove by clear and convincing evidence that Glaser became insolvent in 2011 immediately after transferring the farm to Shreve.

e. There is no proof in the record that Glaser intentionally acted to defraud the State of Iowa when he transferred the farm to Shreve in 2011.

The trial court's order voiding the Deed to the farm should be reversed because Glaser was current on his payments to the State of Iowa when he

transferred the farm to Shreve and the transfer of the farm did not make him insolvent and any action challenging the deed to the farm based upon fraud is now barred by the Statute of Limitations.

2. There was not clear and convincing proof that Shreve aided and abetted Glaser in a conspiracy to commit fraud on the Iowa Department of Revenue when he transferred the farm to her in 2011.

There was no evidence admitted at trial that Shreve entered into a "conspiracy" with Glaser to defraud the Iowa Department of Revenue by "aiding and abetting" Glaser by giving him substantial assistance or encouragement to defraud the Iowa Department of Revenue on September 9, 2011. See, *Production Credit Ass'n v. Shirley,* 485 N.W. 2d 469, 472 (Iowa 1992) and *Shea v. Lorenz,* 869 N.W.2d. 196 (Iowa App., 2015) (Table) (No. 14-0898) (Court of Appeals decision 7-9-15) pg. 8-9.

The Administrator's Motion to Amend to Conform to the Proof should have been denied because the Administrator failed to prove at trial each of the critical elements of this new claim based upon Shreve allegedly aiding and abetting a conspiracy to defraud the Iowa Department of Revenue out of the value of the farm.

VI. The trial court abused its discretion when it granted the Administrator's proffered amendment and ruled that the amendment related back to the original pleading.

A. Scope and Standards of Review.

The appellate court's review of the district court's ruling on a motion for leave to amend is for an abuse of discretion. See, *Holliday v. Rain & Hail L.L.C.*, 690 N.W. 2d 59, 63 (Iowa 2004).

B. Preservation of Err.

Kindsfather preserved this issue for appellate review when she raised it in her Closing Argument filed June 1, 2018. (Closing Argument III(C), pp. 20-25 (Opinion, p. 13, second full par.). (App. p.63)

C. The trial court abused its discretion when it ruled that the Administrator's proffered amendment related back to the original pleading based upon its finding that the transfer of the farm from Glaser to Shreve in 2011 arose out of the same "conduct, transaction or occurrence" as the transfer of the house and two lots in Maquoketa in 2012 in order to circumvent the bar of the statute of limitations.

The trial court found that:

> The Court finds and concludes here that the amendment to add the claim to fraudulent transfer of the farm from Glaser to Shreve meets the "claim test" of Rule 69(e) and relates back to the filing of the original motion to set aside conveyances. The Court finds that such claim related to the farm arises out of the conduct, transaction or *occurrences [sic]* set forth or attempted to be set forth in the original motion to set aside conveyances. Iowa R. Civ. P. 69(e). Accordingly, the Court finds and concludes that the Administrator's claim of fraud in the transfer of the one-half interest in the farm from Glaser to Judy Shreve is not barred by the applicable statute of limitations. (Ruling, pp. 16-17). [italics added]. (App. pp.66-67).

The terms "conduct, transaction or occurrence" must be interpreted as *singular events* and not as the trial court incorrectly interprets these words as

being in the plural. In fact, the trial court misquoted Rule 69(e) [now Rule 1.402(5)] by misspelling the word "occurrence" in the plural. (Ruling pp. 16-17). (App. p.66-67).

> I.R.Civ.P. 1.402(5) provides that:
>
> All amendments must be on a separate paper, duly filed.... Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth of attempted to set forth in the original pleading, the amendment relates back to the date of the original pleading....

The Administrator's amended pleading did not relate back to the original pleading. The claim regarding the transfer of the farm to Shreve did not arise out of the same *singular* "incident" as the transfer a year later of the house and two city lots to Kindsfather and did not "arise out of the conduct, transaction or occurrence" set forth or attempted to be set forth in the Administrator's original Motion to Set Aside the transfer of the house and two city lots a year later to Kindsfather.

Based upon its erroneous conclusion that the amended pleading related back to the original pleading, the trial court proceeded to judgment against Shreve and voided the Warranty Deed she received from Glaser without protecting her right to defend her Warranty Deed against the Administrator's claim. See, *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 491-492 (Iowa, 2000).

All evidence and testimony related to the transfer of the farm should be stricken from the record and the new claim regarding the transfer of the farm should be dismissed because it is barred by the Statute of Limitations.

VII. The trial court abused its discretion when it allowed the Administrator to amend her pleadings when the claim to void the deed to the farm was barred by the statute of limitations.

A. Scope and Standards of Review.

The appellate court's review of the district court's ruling on a motion for leave to amend is for an abuse of discretion. See, *Holliday v. Rain & Hail L.L.C.*, 690 N.W. 2d 59, 63 (Iowa 2004).

B. Preservation of Error.

Kindsfather preserved err regarding the statute of limitations in Kindsfather's Affirmative Defenses filed January 17, 2018 when she raised the statute of limitations under section 614.1(4) and section 684.9 of the Code of Iowa as an affirmative defense of the Administrator's claim regarding the transfer of the farm. (Affirmative Defenses filed January 17, 2018, p.2., par. 24). (App. p.35)

Kindsfather further preserved err by objecting to Administrator's Exhibits 8, 9, 12 and 13 based upon the statute of limitations. (Ruling pp. 5-6 and p. 13). (App.pp. 55-56 and p. 63)

Kindsfather resisted the Administrator's oral Motion to Amend her original Motion to add the transfer of the farm to her claim made on May 16, 2018 based upon the statute of limitations. (Ruling, pp 5-6) (App.p. 55-56) (Tr. Vol. II,pp. 113-114)(App.pp.295-296)

Kindsfather renewed her objection regarding the statute of limitations to the transfer of the farm in her Closing Argument filed June 1, 2018. (Closing Argument IV, pp. 20-25)

C. The trial court abused its discretion and allowed the Administrator to amend to add her new claim regarding setting aside the first transfer of the farm from Glaser to Shreve in 2011 because any action to void said transfer was barred by the statute of limitations.

The Administrator's Motion to Amend her claim made orally to the court on May 16, 2018 to add a new claim to set aside the transfer of Glaser's one-half interest in the farm to Shreve was barred by the five-year statute of limitations for actions to set aside transfers in defraud of creditors by Iowa Code section 684.9(1) and Iowa Code section 614.1(4). See, *First Security Bank & Trust Company v. King*, No. 6-1013/05-2039 (Iowa App. 1/31/2007) (Iowa App., 2007), p. 6. and *Schlichte v. Schlichte*, 858 N.W. 2d 36 (Table), Court of Appeals decision Oct 15, 2014, No. 13-1713, p. 2.

The trial court found that:

> It is undisputed, however, that a five-year statute of limitations applies to actions attempting to set aside transfers in defraud of creditors. See Iowa Code §§ 633.368, 684.9, 614.1(4). It is also undisputed that Kindsfather has raised the affirmative defense of statute of limitations in her filing January 17, 2018. It also is undisputed that the warranty deed transferring the farm from Glaser to July Shreve bears a date of September 8, 2011, and was properly recorded September 9, 2011. [Exhibit 8]. It also is undisputed that the transfer of the farm from Shreve to Kindsfather was by warranty deed dated September 17, 2012, properly recorded September 19, 2012. Exhibit 9. Accordingly, claims by the Administrator of fraudulent transfers are deemed extinguished pursuant to Iowa Code § 684.9(1) if not brought within five years of the date of such transfers.
>
> The motion of the Administrator to set aside conveyances and include transferred property in the estate inventory was filed in this matter June 28, 2016. As noted above, no specific mention was made in such filing of any request to set aside the conveyances of the farm within the motion to set aside filed June 28, 2016. Despite the Court's conclusion that the Administrator should be allowed to amend the motion to include a claim to set aside the transfers of the farm, granting such motion would not and does not cure any defects based upon the statute of limitations in the original filing of the motion to set aside June 28, 2016.
>
> Kindsfather contends that any action based upon alleged fraud in the transfer of the one-half interest in the farm from Glaser to Judy Shreve by warranty deed, properly recorded September 9, 2011, is barred by the statute of limitations if filed after September 9, 2016, five years from the recording date of the warranty deed. See Ex. A. The original motion to set aside the conveyances was filed here June 28, 2016, within the five-year period following the recording of the warranty deed. (Ruling, p. 16). (App. p.66)

Under the common law, a suit to set aside fraudulent conveyances based upon equitable fraud was governed by the five-year period of limitations contained in Iowa Code section 614.1(4). *Olson v. Larson*, 233 Iowa 1032, 8 N.W. 2d 697, 698 (Iowa, 1943), *Somers v. Spaulding*, 229

Iowa 432, 435, 294 N.W. 610 (Iowa, 1940), *Sims v. Gray*, 93 Iowa 38, 41-42, 61 N. W. 171 (Iowa, 1894).

The recording of the two Warranty Deeds for the farm; first from Glaser to Shreve on September 9, 2011 as Document No. 11-3494 and second from Shreve to Kindsfather on September 19, 2012 as document No. 12-3968 was *constructive notice* to both the Administrator and the Iowa Department of Revenue of each of these two transfers. Both the Administrator and the Department are deemed to have discovered any alleged fraud inherent in either of these two deeds at the time the deeds were recorded. See, *Anderson v. King*, 93 N.W. 2d 762, 766 (Iowa 1958), *Bristow v. Lange,* 221 Iowa 904, 912, 266 N.W. 808, 812 (Iowa, 1936) and *Van Wechel v. Van Wechel*, 178 Iowa 491, 159 N.W. 1039, 1041 (Iowa, 1916), and *Laird v. Kilbourne and Others*, 70 Iowa 83, 30 N.W. 9, 11 (Iowa, 1886).

Under Iowa Code section 684.9(1), the recording of a deed is constructive notice of any fraud in the transfer *Schlichte v. Schlichte*, 858 N.W. 2d 36 (Table), Court of Appeals decision filed Oct 15, 2014, No. 13-1713, p. 3.

The Administrator had *constructive notice* of the recording of the deeds to the farm which predated the filing of the original pleading filed

June 28, 2016. If the Administrator objected to the transfer of the farm to Shreve as being fraudulent, she should have sued Shreve instead of Kindsfather and described the transfer of the farm to Shreve in her original pleading. The trial court's granting the Motion to Amend after the trial was concluded was clearly an abuse of discretion and was done to *circumvent* the bar of the statute of limitations to the Administrator's action to void this transfer.

D. The trial court abused its discretion when it granted the Administrator's Motion to Amend to Conform to the Proof which raised a new claim to set aside the second transfer of the farm from Shreve to Kindsfather because this new claim was also barred by the statute of limitations.

The transfer of the farm by Warranty Deed from Shreve to Kindsfather on September 19, 2012 did not arise out of the same conduct, transaction, or occurrence set forth or attempted to be set forth in the Administrator's original pleading which referred specifically and only to the transfer of Lots 11, 12 and 13 by three Quitclaim Deeds recorded December 28, 2012.

The Warranty Deed from Judy Shreve to the *second transferee* Kindsfather was dated September 17, 2012 and was recorded September 19, 2012 as Document #12-3968. (Administrator's Exhibit 9).(App.pp.186-190) More than five years had expired since this Warranty Deed was recorded

when the Administrator made her Motion to Amend on May 16, 2018.(App.pp. 295-296) This proffered amendment which attempted to state a new claim to set this Warranty Deed aside as being in defraud of Glaser's creditor's on September 19, 2012 was barred by Iowa Code sections 614.1(4) and section 684.9 after September 19, 2017.

The proffered amendment regarding the deed from Shreve to Kindsfather was barred by the statute of limitations in Iowa Code section 614.1(4) and section 684.9 and granting said amendment was clearly an abuse of the trial court's discretion.

The trial court should have found that the Warranty Deed from Shreve to Kindsfather [Exhibit 9] was valid, unless the Warranty Deed from Glaser to Shreve was voided first, and an action to set it aside was barred by the statute of limitations.

VIII. The trial court erred when it denied Kindsfather and Randall their *homestead exemption.*

A. Scope of Review.

The Administrator's Motion was an equitable action under Iowa Code section 633.33 and 633.368.

The appellate court's review is *de novo*. Iowa R. App. P. 6.4.

B. Preservation of Error.

Kindsfather raised the issue of Kindsfather's and Randall's claims for their homestead exemption under Iowa Code section 561.16 by raising the homestead exemption in Kindsfather's Amended Affirmative Defenses filed January 17, 2018 (Affirmative Defenses filed January 17, 2018, pp.1-2, par. 23). (App. pp.34-35)

Kindsfather preserved the defense of the homestead exemption in Kindsfather's Final Argument filed June 1, 2018. (Final Argument and Brief, Argument II. pp. 7-13).

C. Kindsfather's and Randall's homestead claim.

On November 1, 2016 Kindsfather and her husband, Randall, recorded a *Plat of Homestead* in the Jackson County Recorder's Office as Document No. 16-4010 confirming their claim to the right to a homestead exemption under Iowa Code section 561.16 for their home located on Lot 12 and addressed at 612 Country Club Drive, Maquoketa, Iowa. (Exhibit D) (App.pp. 98-99)(Tr.p. Vol. II, p. 46 and p. 66)(App.p. 278 and p. 280)

The trial court acknowledged that both Kindsfather and Randall claimed homestead rights in Lots 11, 12 and 13. (Opinion, p. 12). (App. p.62)

"Homestead rights are jealously guarded by the law." *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 101 (Iowa 2004).

A homestead cannot be ordered sold and possession surrendered for purposes of judicial sale to satisfy a judgment because of its homestead character. Homestead property may not be impressed with the lien of the judgment and cannot be subjected to execution sale. *Claeys v. Koeppel*, 193 N.W. 2d 525, 528 (Iowa 1972).

Kindsfather moved into the house located on Lot 12 in February, 2009 (Tr.p. Vol. II, p. 65 and p. 90). (App. p.279 and p.288) She has occupied said house as her home continuously from February, 2009 until the present. (Tr. p. Vol. II., p.65) (App. p.279)

Kindsfather married Jason Randall ["Randall"] on November 20, 2012 and they have lived together on Lot 12 as their homestead since the date of their marriage to the present. (Exhibit KK) (App.p. 114) (Tr.Vol. II, p. 38 and p. 65). (App. p.273 and p. 279))

Kindsfather and Randall occupied the house on Lot 12 and the adjacent Lots 11 and 13 as their homestead after Glaser transferred the properties to Kindsfather by three Quitclaim Deeds for Lots 11, 12 and 13

dated November 19, 2012 and were recorded December 28, 2012. (Estate Exhibit 11). (Tr.p. Vol. II, p. 87). (App. p.285)

There was no agreement for Kindsfather to ever return title to these three Lots to Glaser. (Tr.p. Vol. II, p. 87 and pp. 89). (App. p.285 and p.287)

Kindsfather used the two contiguous Lots 11 and 13 as are part of her homestead under Iowa Code section 561.16 going back to the date she occupied the home on Lot 12 in February, 2009. (Tr.p. Vol. II, pp. 40-41). (App. p.274-275) *Fyffe v. Beers*, 18 Iowa 4, 11-12, 85 Am. Dec. 577 (Iowa 1864) and *Kelley v. Williams*, 110 Iowa 153, 155, 81 N.W. 230 (Iowa 1899).

The trial court held that if "the Administrator and the State have failed to meet their burden of establishing fraudulent transfer of the properties, Kindsfather and Randall will maintain their ownership of the properties and such properties will not be transferred into the Estate." (Ruling, p. 12).(App.p. 62)

D. The trial court erred when it ruled that Kindsfather lost the homestead exemption because she participated in a conspiracy with Glaser to defraud the Iowa Department of Revenue.

The trial court stated: "if the Court finds that the properties were transferred fraudulently neither Kindsfather or Randall would own the properties." (Opinion, p.12). (App.p. 62)

There had to be clear and convincing evidence in the trial record that Kindsfather *knowingly entered into a conspiracy with Glaser by aiding and abetting Glaser in a scheme to defraud the Iowa Department of Revenue*, before the trial court could find that Kindsfather participated in a conspiracy and deny Kindsfather and Randall their claim of homestead exemption for their home at 612 Country Club Drive, Maquoketa, Iowa and the two adjacent lots. See, *Muir v. Bozarth,* 44 Iowa 499, 504 (1876). See also, *Cox v. Waudby*, 433 N.W. 2d 716, 719 (Iowa 1988)."

The trial court found that: "The Court finds and concludes that, through her testimony and demeanor, Kindsfather was aware of Glaser's activities and intent or acted in willful disregard of such activities and intent." (Opinion, p. 21). (App. p.71)

However, the trial court did observe that "Kindsfather testified she believes Glaser deeded her the property [612 Country Club Drive in Maquoketa (Lot 12)] because he loved her and he wanted to assist her in getting out of an abusive relationship." [brackets added]. (Opinion, p. 9). (App.p.59)(Tr.p.p. Vol. I. p. 84)(App.p. 253)

In March 2009, when Glaser allowed Kindsfather to move into the house, she was a young mother with a child who was in the middle of a

nasty divorce. (Tr.p. Vol. I. p.77 and p. 105) (App. p.252 and p.261) She was unemployed and no place to live. (Tr.p. Vol. I, pp. 87-88). (App. p.256-257).

Glaser lived with Kindsfather for two years from 2010 to 2011. (Tr.p.p. Vol. I, p. 100) (App. p.258) and they remained dear friends after the transfers.

Glaser had no children to benefit from his estate. (Probate Report and Inventory p. 1) He stated he did not want his estate to go to his cousins. (Tr.p. Vol.I, p. 85-87)(App. pp.254-256)

The Iowa Court of Appeals recently stated:

> Conspiracy is an agreement of two or more persons acting together to accomplish an unlawful purpose, or to accomplish a lawful purpose by unlawful means....The principal element of conspiracy is the agreement, involving mutual mental action and an intent to commit the act that results in injury...Wrongful conduct forming the base of a civil conspiracy claim must be either an intentional tort or actionable in the absence of conspiracy....Speculation, relationship, or association and companionship alone do not establish a conspiracy....
>
> To be a "substantial factor in causing the resulting tort," it is required that the encouragement or assistance given to the alleged aider and abettor be a proximate cause of the tort causing injury. [citations omitted].

Shea v. Lorenz, 869 N.W.2d 196 (Iowa App., 2015), p. 8.

The trial court does not cite any specific evidence proving that Kindsfather *gave any encouragement or assistance to Glaser which was a proximate cause of the Iowa Department of Revenue's loss of tax revenue.*

There is no evidence in the record that *at the time of the transfer* of the house at 612 Country Club Drive, Maquoketa, Iowa by a Quit Claim Deed dated November 19, 2012, Kindsfather either knew of Glaser's intention to defraud the State of Iowa or knowingly aided and abetted Glaser in any scheme to defraud the State of Iowa.

The Administrator testified that she had no knowledge regarding Glaser's creditors or how much he owed his creditors in December, 2012. (Tr.p. Vol. 1, p. 59-60). (App. pp.249-250)

The record at trial shows that Glaser had other assets from which he could pay his bills when he gave Kindsfather the house and two lots in 2012. After these transfers to Kindsfather, Glaser still owned his home at 718 Swift Court which had equity of at least $37,000 (Tr.p. Vol II, p.80). (App. p.282) and he still had two pensions which were paying him at least $6,000 per month. (tr. Vol. II, p. 81). (App. p.283)

Kindsfather testified that she had no knowledge of Glaser's financial affairs until she was served mortgage foreclosure papers on Glaser's house

at 718 Swift Court about a year after she got title to the three lots. (Tr.p. Vol. II, p. 44). (App. p.276) Kindsfather and Randall both testified that after Kindsfather was served with the foreclosure papers, they consulted with attorney Marie Tarbox, in Davenport, Iowa. (Tr. Vol. II, p. 44 – 46). (App. p.276-278) They both further testified that it was only after attorney Tarbox told them about the income tax liens recorded against Glaser disclosed in the title search that they learned about the income tax liens against Glaser which had been recorded by the Iowa Department of Revenue. (Tr.p. Vol. II, pp. 44-46) (App. p.276-278)

The trial court gave great weight to a letter from Glaser dated June 7, 2014 which Glaser hand delivered to Kindsfather's home and hung on her front door knob September 9, 2014, the day he died. (Ruling, pp. 18-19). (Exhibit SS). (Tr.p. Vol. I, p. 60-61 and Tr.p. Vol. II, pp. 32-35). (App. p.250-251 and 269-272) In this letter, Glaser advised Kindsfather that there were liens on the house. Kindsfather testified that *she was directed to not read this letter until September 10, 2014, the day after Glaser's death.* (Tr.Vo. II, pp. 32-35). (App. p.269-272)

This letter delivered September 9, 2014 does not shed any light on whether or not Glaser intended to defraud his existing creditors two years earlier on December 28, 2012, the day he recorded the three Quit Claim

Deeds to Kindsfather or a year earlier in 2011 when he transferred the farm to Shreve.

IX. The trial court erred when it ordered that the Warranty Deeds from Glaser to Shreve and from Shreve to Kindsfather be voided rather than fashioning relief "only to the extent necessary to satisfy" the Iowa Department of Revenue's liens pursuant to Iowa Code section 684.7.

A. Scope of Review.

The Administrator's Motion was an equitable action under Iowa Code section 633.33 and 633.368.

The appellate court's review is *de novo*. Iowa R. App. P. 6.4.

B. Preservation of Error.

Kindsfather preserved the issue that the trial court's order voiding Glaser's transfers was contrary to *Shaw v. Addison* and Iowa Code section 684.7 and was unfair, overly harsh, and inequitable by raising this issue in her I.R.Civ. Rule 1.904(2) Motion. (I.R.Civ. Rule 1.904(2), p. 2)(App.p.75).

C. Any action by the Iowa Department of Revenue to enforce the income tax liens against Glaser recorded before Glaser's Warranty Deed to the farm to Shreve and recorded before the three quit claim deeds to Kindsfather for the house and two lots must be brought under Iowa Code section 421.26 and chapter 684.

In *Carson v. Rothfolk*, the Iowa Court of Appeals stated that Chapter 684 of the Code of Iowa, the Uniform Fraudulent Transfers Act, applies to *all claims* based upon alleged fraudulent transfers arising after January 1, 1995. *Carson v. Rothfolk*, No. 3-504/12-1021 (Iowa App. 8/7/2013)(Iowa App., 2013) p. 6.

Chapter 684 must apply to this action pursued by the Attorney General under Iowa Code section 421.26 in these probate proceedings.

Iowa Code section 684.7 provides a remedy for creditors to avoid fraudulent transfers of assets. However, by definition, the term "asset does not include property to the extent it is encumbered by a valid lien". Section 684.1(2)(a). "Transfer" is defined as disposing of an "asset" or and "interest in an asset". Section 684.1(11). "Lien" includes a statutory lien" such as under 421.26. Section 684.1(8). "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceeding. Section 684.1(12).

A lien under Iowa Code section 422.26 is not a valid lien as to third parties under section 684.1(12) until it is recorded pursuant to section 422.26(3).

Transfers of property subject to a valid recorded tax lien are not, by definition, fraudulent transfers. The Department of Revenue must independently pursue its administrative collection proceedings authorized under Iowa Code section 422.26(7)(b) to collect on its income tax liens recorded prior to the transfer of the real estate to Kindsfather.

D. The Administrator can only pursue relief for the Iowa Department of Revenue to recover on the liens recorded after the transfers of properties to Shreve and Kindsfather.

Iowa Code section 684.7(1)(a) provides relief to the Iowa Department of Revenue only to the extent necessary to satisfy the Iowa Department of Revenues unsecured claims. See, Iowa Code section 684.8(2).

The district court only had the *power to avoid* a portion of the transfer sufficient to make the State of Iowa whole. See, *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

Under Chapter 684, once the State of Iowa is made whole from its injuries suffered by the fraudulent transfer by Glaser, the title to the properties remains with the transferees. See, *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011).

E. The income tax liens in favor of the State of Iowa against Glaser which had not been recorded prior to Glaser transferring the

properties to Kindsfather can be protected by the court without voiding the transfers of Glaser's properties.

The trial court stated on the record prior to the trial that the issue for the trial was whether the Iowa Department of Revenue could obtain relief for the portion of its claim relating to income tax liens that had not been recorded prior to the decedent's transfer of real estate to Shreve and Kindsfather. (Tr.p. p., Vol I, p.19).

The trial court found that: "the parties agree the total amount of $40,278.28 represents the principal amount of the lien encumbrances on the properties which are the subject of the action, with $16,171.09 of that amount also encumbering the Jackson County farm property. (Ruling, p. 4, third paragraph from the top).(Ruling p. 4) (App. p.54).

The remaining balance of unsecured liens owed to the State of Iowa is presumably the amount of the Amended Preferred Claim filed April 13, 2017 in the amount of $114,237.48 less the secured liens of $40,278.28 which would be $73,959.20.

In *Schaeffer v. Schaeffer*, 795 N.W. 2d 494, 498 (Iowa 2011), the Iowa Supreme Court indicated that Iowa Code section 684.5 provides "present creditors with a cause of action against fraudulent transferees."

This action by the Administrator appears to have been brought under Iowa Code section 684.4. Under this section, the Administrator has the burden to prove by "clear and convincing evidence", on behalf of creditors whose claims arose after the transfer, that Glaser either had actual intent to defraud a future creditor or failed to receive "reasonably equivalent value in exchange for the transfer" if certain indicia of fraud are also proven.

However, after the court has found that a transfer was made fraudulently as to creditors, it makes no difference how the fraud was proved, the nature of the relief the court can grant is limited to that set forth in Iowa Code section 684.7(1)(a).

F. The trial court erred when it did not fashion an alternate remedy to protect the Iowa Department of Revenue liens and leave title and possession of the properties in Kindsfather.

The trial court erred when it ruled that all of the properties transferred by Glaser were to be sold at Sheriff's sale and the proceeds turned over to the Administrator for the benefit of the estate's "accepted" claimants and that the proceeds of sales were to be delivered to the estate for "proper distribution" to "some or all" of the creditors of the estate (Ruling, p. 20, Section D). (App. p.70)

Under section 684.7, a fraudulent conveyance in and of itself does not render the conveyance void. See, *Schaefer v. Schaefer*, 795 N.W. 2d 494, 498 (Iowa 2009), and *Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 884 (Iowa 1996).

Kindsfather asserts that the remedies contained in Iowa Code section 684.7(1)(a) (a special statute) prevail over those contained in Iowa Code section 633.368 (a general statute). Iowa Code section 4.7. [1]

The authority the trial court had to fashion relief to protect the interest of the Iowa Department of Revenue was limited by Iowa Code section 684.7(1)(a) to fashion relief for the "avoidance of the transfer …to the extent

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1 In *State v. Perry*, 440 N.W.2d 389, 390 (Iowa 1989), the Iowa Supreme Court held that:

It is a fundamental rule of statutory construction that where a general statute, if standing alone, would include the same matter as a special statute and thus conflict with it, the special statute will be considered an exception to or a qualification of the general statute and will prevail over it, whether it was passed before or after such general enactment. *State v. Halverson*, 261 Iowa 530, 537-38, 155 N.W.2d 177, 181 (1967).

In 1971, this rule was codified at Iowa Code section 4.7, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

necessary to satisfy the creditor's claims". See, 684.8(2). See also, *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

G. The trial court erred when it did not grant Kindsfather the right to redeem the properties from the "in rem" judgment in favor of the Estate.

The trial court ordered that: "Such properties described in Attachment/Appendix A to the Administrator's post-trial brief shall be sold on execution to satisfy all accepted claims against the Estate and, ***if not redeemed***, shall be conveyed to the purchaser by the sheriff free of the claims of all claimants." (Ruling p. 21. Par 3). [*italics added*].(App.p. 71).

Kindsfather preserved the issue that the trial court erred when it did not establish Kindsfather's right to *redeem* from the judgment in rem in the amount of $73,959.20. (I.R.Civ. Rule 1.904(2) Motion, p. 2) (App.p.75).

Section 684.7(2) gives the trial court authority to allow Kindsfather the right to redeem from execution sale.

H. Alternatively, the appellate court can declare that the State of Iowa's income tax liens recorded after Glaser conveyed the house and two lots to Kindsfather attached to this property if Kindsfather cannot claim a homestead exemption in them.

If Kindsfather cannot claim a homestead exemption on the house and two lots, the appellate court can declare that the tax liens recorded after their transfers to Kindfather have priority over the interests of Kindsfather in the

house and two lots. See, *Iowa Fair Plan v. U.S. Internal Revenue Dept.*, 257 N.W.2d 626, 629 (Iowa 1977).

This remedy places the State of Iowa in exactly the same position as if Glaser had never transferred the house and two lots to Kindsfather.

Kindsfather's Requested Relief

The appellate court should make a finding of fact and law that the Administrator is barred from getting an order voiding the deeds to the house and two adjacent lots and the farm and returning title to the estate because neither Glaser or the Administrator (one of his heirs) had "clean hands" in equity.

The court should enter a Declaratory Judgment in favor of Kindsfather that only the first two income tax liens in favor of the State of Iowa recorded before Glaser transferred the house and two adjacent lots to Kindsfather are liens against the house and two adjacent lots and that only the first recorded income tax lien is a lien on the farm.

The appellate court should enter a second Declaratory Judgment in favor of Kindsfather that she and Randall are entitled to the homestead exemption for Lots 11, 12 and 13 against all of the Department of Revenue's

tax claims which were not recorded as tax liens in the Jackson County Recorder's Office before December 28, 2012.

The appellate court should make a finding of fact and law that Kindsfather and Randall are entitled to their homestead exemption in the house and two adjacent lots located at 612 Country Club Drive, Maquoketa, Iowa against the claims of the Administrator of the Glaser estate.

The appellate court should enter additional Declaratory Judgments in favor of Kindsfather that the Administrator's claim to set aside the transfer of the farm is barred by the Statute of Limitations and that this case could not proceed to trial without personal jurisdiction over Judy Shreve.

The appellate court should declare that the Iowa Department of Revenue's only remedy against the house and two adjacent lots effective against their homestead exemption is an administrative collection action under section 422.26 of the Code of Iowa to collect the first two liens recorded before December 28, 2012. See, *Iowa Department of Revenue v. Yuska*, 821 N.W. 2d 779, 779 (Iowa 2012).

If the appellate court finds that Kindsfather is not entitled to her homestead exemption in the house and two lots, then the appellate court should attach the liens of the Iowa Department of Revenue filed after the transfer of the house and two lots in the amount of $73,959.20 to these

properties and overrule the trial court's order voiding the Quit Claim Deeds from Glaser to Kindsfather.

If the appellate court finds that Shreve aided and abetted Glaser in a conspiracy to avoid payment to the Iowa Department of Revenue, then the appellate court should attach the liens of the Iowa Department of Revenue filed after the transfer of the farm to Shreve to the farm and overrule the trial court's order voiding the Warranty Deed to Shreve.

The Supreme Court must remand this case to the district court with directions to the district court to enter an order consistent with the appellate court's decision on this appeal.

REQUEST FOR ORAL ARGUMENT

Kindsfather respectfully requests oral argument on all of the issues presented by this appeal.

Dated: August 21, 2019.

Respectfully submitted:

John T. Flynn #AT0002597
Brubaker, Flynn & Darland, P.C.
201 W. Second St, Suite 400
Davenport, IA 52801

Tel: (563) 322-2681
Fax: (563) 322-4810
E-mail: johnflynn01@aol.com

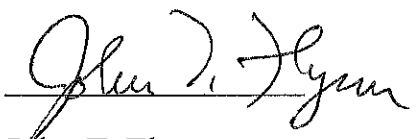
ATTORNEY FOR THE CLAIMANT-
APPELLANT

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

I hereby certify that this Brief complies with the type-Volume limitation of I.R. App. P. 6.903(1)(g)(2) or (3) because this Brief contains 13,667 words, excluding the part of the Brief exempted by I.R. App. P. 6.903(1)(g)(1).

I further certify that this Brief complies with the typeface requirements of I.R. App. P. 6.903(1)(e) and the type-style requirements of I.R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

August 21, 2019
Date



John T. Flynn

Attorney's Cost Certificate

I, John T. Flynn, hereby certify that the true and actual amount paid for printing the forgoing Claimant- Appellants' Corrected and Substituted Proof Brief consisting of 86 pages was the sum of $0.00, exclusive of service, tax, postage and delivery charge.

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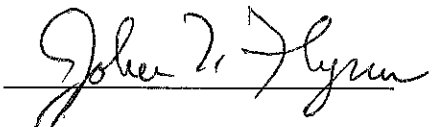


John T. Flynn

Certificate of Filing and Service

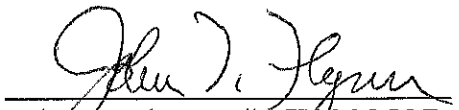
I certify that on the 21st day of August, 2019, the foregoing document was electronically filed with the Iowa Supreme Court Clerk of Court through the Iowa Judicial Branch Appellate Courts Electronic Filing System Notification and access to such filing shall be provided by the Electronic Filing System to all counsel of record who are members of the ECF system.

Proof of Service

I further certify that on the 21st day of August, 2019, I served one (1) copy of the foregoing Claimant-Appellants' Corrected and Substituted Proof Brief by depositing one copy in the U.S. Mail, with postage prepaid, addressed to:

David M. Pillars
1415 11th Street, Suite A
P.O. Box 435
DeWitt, IA 52742

Laurie Heron McCown
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319



John T. Flynn #AT0002597
Brubaker, Flynn & Darland, P.C.
201 W. Second St, Suite 400
Davenport, IA 52801
Tel: (563) 322-2681
Fax: (563) 322-4810
E-mail: johnflynn01@aol.com