IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-0008

IN THE MATTER OF THE ESTATE OF FRANCIS O. GLASER

Administrator Judy E. Bowling,
Movant-Appellee,

JOINED BY IOWA DEPARTMENT OF REVENUE,
Creditor – Appellee

v.

SHERRY M. KINDSFATHER,
Interested Party-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JACKSON COUNTY
THE HONORABLE SEAN W. McPARTLAND, JUDGE

BRIEF OF APPELLEE
AND
REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

The Administrator and the Iowa Department of Revenue (Department) agree that this case involves the application of existing legal principles; thus, both the Administrator and the Department agree with Kindsfather that the case should be transferred to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

The district court cited overwhelming evidence in concluding that the decedent, Francis Glaser, spent years fraudulently transferring assets to thwart his creditors, including the State of Iowa. The clear and convincing evidence before the district court demonstrated significant efforts by Glaser to avoid his creditors during his lifetime and for Glaser to ultimately prejudice the creditors of his estate. The appellant, Sherry Kindsfather, aided these efforts.

This is an appeal from the district court's order to void Glaser's fraudulent transfers.

The district court, sitting in equity under the plenary powers of the probate code, found that several transfers of real property from Glaser to Kindsfather were made without consideration (including a property transferred first to Kindsfather's mother to be held in trust for her); were made during the time period when he was insolvent; and were transferred specifically to avoid the reach of Glaser's creditors. The district court also found that Kindsfather intentionally or negligently aided in this fraud. As a result, the district court ordered that the transfers be voided and that the property at issue be included in the estate inventory and administered in accordance with the probate code. If the decision is affirmed, many or all the creditors the decedent defrauded with Kindsfather's aid will be made partially or completely whole, and his co-conspirator in this series of fraudulent events will not continue to benefit at the expense of his defrauded creditors.

Because the law only allows a creditor to pursue an action for fraudulent conveyance related to a probate estate if the personal

representative of the estate refuses, the Iowa Department of Revenue requested the Administrator file the motion asking that the transfers be voided. In reviewing the probate file in 2016, the Iowa Department of Revenue noted several property transfers occurred without consideration at a time when the decedent owed a substantial amount of state taxes. Subsequently, the Department requested the Administrator comply with her statutory responsibility to marshal all the assets of the estate for proper distribution, including ensuring that the decedent's creditors be paid from the proceeds of the estate to the extent possible. The Administrator then filed a motion to set aside conveyances and include transferred property in estate inventory, joined by creditor Iowa Department of Revenue.

Hearing was held in this matter on May 15 & 16, 2018. On October 31, 2018, the Court entered its Findings of Fact, Conclusions of Law, Rulings and Judgment. The Court found that Glaser had fraudulently transferred several properties to Sherry Kindsfather, including real estate where Kindsfather and her husband, Jason Randall, live; and a half-interest in a Jackson County Farm. The district court ordered that these transfers be voided and that the

property be included in the assets of the estate for appropriate distribution.

The district court found that there was "overwhelming" direct and indirect proof of Glaser's fraud. Dist. Ct. Order at 21 (App. at 71). As the district court noted, "[A]lthough fraud typically is not committed openly and usually is an offense of secrecy, Glaser in this matter was explicit and clear in his intent to defraud creditors and in his directions to Kindsfather seeking her assistance in his endeavor." *Id.* at 18 (App. at 68). The Court further found that, "Kindsfather's complicity or cooperation with Glaser is clear from her actions, inactions and demeanor at trial." *Id.* at 20 (App. at 70), and that "Kindsfather was aware of Glaser's activities and intent or acted in willful disregard of such activities and intent." *Id.* at 21 (App. at 71).

The district court further found there was proof of prejudice to Glaser's creditors, specifying that, "Most of the Estate's creditors, including the Iowa Department of Revenue, will not be paid if the property that was fraudulently conveyed is not returned to the Estate for proper distribution. If the fraudulent transfers are nullified and the recaptured assets are returned to the Estate for proper

distribution, some or all of these creditors will have their claims partially or fully satisfied." *Id.* at 20 (App. at 70).

Finally, the district court found that Glaser was aware of his substantial liabilities to the State of Iowa from 2007 until his death, with undisputed evidence in the record recounting over sixty communications between Glaser and the Department of Revenue in that time period. *See id.* at 4 (App. at 54). In providing posthumous instructions to Kindsfather on how to continue the fraud in a letter addressed to Kindsfather that he intended to be read after his death, Glaser also wrote that he had "intentionally ran up a bunch of credit card debt fully intending to never pay it back." *Id.* at 8 (App. at 58). Per Iowa law, Glaser was presumed to be insolvent because he was not paying his debts as they became due. *See* Iowa Code § 684.2(2).

Kindsfather does not charge the district court with error on any of these conclusions, nor does she appeal from the district court's findings of fact. Instead, she argues a series of five inapplicable and unpersuasive procedural issues in an attempt to avoid the clear result of this avalanche of indisputable facts. Each of these procedural issues represents an attempt to shoehorn the clear facts of this case

into inapplicable defenses. These attempts are not supported by law, and do not further the principles of equity.

STATEMENT OF THE FACTS

Kindsfather sets forth many of the transactions in her statement of facts, and the district court sets out the details of these transactions at length in its Order, so the Administrator and Department will not detail each of the many transactions Glaser and Kindsfather executed to defraud creditors. Rather, the Administrator and Department supplement the statement of facts as follows:

The decedent, Francis O. Glaser, died at the Jackson County Courthouse on September 9, 2014. As the district court noted, "On that date, Glaser attended a Board of Supervisors meeting to contest taxes he was alleged to owe on property, including property at 718 Country Club Drive." Dist. Ct. Order at 1 (App. at 51-52). As noted in the Appellant's Statement of Facts, this property was one of the properties transferred for no consideration prior to Glaser's death. "During his presentation and questioning, he opened his briefcase, took out a gun and attempted to shoot local government officials in attendance. Glaser was taken to the ground by one of the members of

the Board of Supervisors, turned the gun on himself and shot and killed himself." *Id*. at 2 (App. at 52).

Glaser's death was the culmination of years of anger against taxing authorities, including the federal government. Exhibit 18 (App. at 219-222). As he detailed in his suicide note to Kindsfather, Glaser intentionally committed fraud by running up credit card bills he never intended to repay; transferring property to Kindsfather to avoid creditors; and executing false mortgages to avoid or deprioritize legitimate liens on the properties he held. Exhibit 18 (App. at 219-222).

Glaser's financial difficulties began no later than 2007, as documented by a Department letter sent to him in February 2007 informing him he was delinquent in filing his tax returns. This was followed by an assessment in May of 2007, and the Department began collection action in June of 2007. *See* Hearing Tr. 1 at 1, 24:18-25:3 (App. at 233). Glaser had over sixty interactions with the Department, including telephone conversations, letters he sent to the Department, and a payment plan he entered and subsequently broke. *See id*. at 25:10–26:16 (App. at 242). Additionally, the Department

recorded multiple tax liens beginning on January 7, 2008. *See, e.g.*, Appendix A (App. at 232).

There is no evidence Glaser was solvent, other than Kindsfather's unsupported and inconsistent guesses as to his income and assets. *See* Hearing Tr. 2 at 99:17–101:22 (App. at 290:17–292:22). Glaser was not paying his debts as they became due, which creates a statutory presumption of insolvency. Kindsfather introduced no evidence as to Glaser's total income, expenses, assets, or debts to overcome the presumption of insolvency.

After 2007, Glaser began the series of property conveyances detailed in Kindsfather's Statement of Facts. All these conveyances were meaningfully between Glaser and Kindsfather. However, in one case, Kindsfather's mother, Judy Shreve, acted as an agent for Kindsfather when Kindsfather was concerned about her own creditors attaching liens to the asset. Shreve agreed to the arrangement only with the stipulation that she would have no responsibility for the property. "From the evidence it seems clear, and the Court finds and concludes, that Glaser's intention was to shield the asset from *his* creditors, and the Court finds and concludes, that conveyance to

Shreve also served to shield the asset from Kindsfather's creditors." Dist. Ct. Order at 14 (App. at 64). Shreve has not held title to the property since September 17, 2012. *See id.* at 15 (App. at 65). It is undisputed that she has no current interest in the property.

The issues before this Court relate only to the procedural questions raised by Kindsfather, with the district court's conclusion that fraudulent transfers occurred going unchallenged. Consequently, the Administrator and Department will not exhaustively relate each of the transactions that demonstrate the fraudulent intent of Glaser and Kindsfather. Rather, the transactions are detailed in a table attached to the Administrator's post-trial brief as Appendix A and discussed in detail in the district court's order. *See id.* at 4-7 (App. at 54-57). Even a summary review of the relevant timeline makes clear Glaser's fraudulent intent to avoid creditors. For example, the Department recorded the first of its liens on January 7, 2008. That same day, Glaser notarized a deed of transfer to Kindsfather for the house where Kindsfather now resides and recorded the deed the next day—January 8, 2008. Administrator's Post-Trial Brief, Appendix A (App. at 232).

The chronology of the ownership of the farm demonstrates the machinations Glaser and Kindsfather completed to avoid their respective creditors. As the district court noted,

> Kindsfather testified that it was Glaser's intent that his interest in the farm eventually go to Kindsfather, but Glaser and Kindsfather were concerned that a creditor would attach a lien to the property if it went directly to Kindsfather. . . . Kindsfather did not offer any explanation why Glaser could not hold title to the property in his own name until Kindsfather was ready and able to take title in her name. From the evidence it seems clear, and the Court finds and concludes, that Glaser's intention was to shield the asset from *his* creditors, and that conveyance to Shreve also served to shield the asset from Kindsfather's creditors.

Id. at 14 (App. at 64).

Kindsfather also testified as to why Glaser issued so many mortgages to her on his properties. She testified that Glaser operated a small commission-based business, and had agreed to pay her half of his total earnings for each sale he made. However, she also testified that her role was minimal and amounted to finding contact information for names he had already identified as good prospects. *See* Kindsfather Deposition at 169:25–178:12 (App. at 228-231). Kindsfather testified that she had assisted Glaser with his generator business, in which he sold generators to cities. Though she testified

that this work justified the various mortgages, totaling over $400,000, she knew almost nothing about the business and had no record of either her work hours or her work product. *See id.* at 169:25–178:12 (App. at 228-231). She testified that Glaser would identify a prospective purchaser, then Kindsfather would provide contact information for a person associated with that prospect, and then Glaser would do everything else associated with the business. *See id*. Kindsfather knew almost nothing about the product or the business model; kept no records; did not know how many generators were sold; and never received any payment. *See id*. She also, per her testimony, never offset this substantial debt she claimed he owed her when he gifted her the farm property. *See id*. There were never any promissory notes executed, and he never made a payment on any of these mortgages. *See id*.

Kindsfather concedes the facts supporting the district court's conclusion that she and Glaser were involved in a scheme to fraudulently defraud Glaser's creditors. Her claims of error are all based on procedural issues.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR WHEN IT FOUND THAT JUDY SHREVE WAS NOT AN INDISPENSABLE PARTY.

A. Scope and Standard of Review.

The standard of review on this issue is correction of errors at law. The Administrator and Department agree that the Administrator's motion was an equitable action under Iowa Code 633.33 and 633.368. Further, pursuant to Iowa Rule of Appellate Procedure 6.907, the review of this Court in equitable actions is generally de novo. (In her brief, Kindsfather cites the former version of the Rule—Rule 6.4.) However, since Kindsfather brings a claim of error based on the interpretation of a rule of civil procedure, this Court's review is for correction of errors at law. *See Jack v. P&A Farms, Ltd.*, 822 N.W.2d 511, 515 (Iowa 2012) (multiple citations omitted) (finding that when a claim of error is based on the interpretation of a rule of civil procedure, the proper standard of review for "interpretation of our rules of civil procedure [is] for correction of errors at law," even when the Court is sitting in equity).

B. **Preservation of Error.**

Neither the Administrator nor the Department contest that error was preserved to the extent that Kindsfather argued that Shreve was an interested party.

C. The District Court accurately concluded that Shreve was not an indispensable party.

Judy Shreve *never* had an interest in the property known variously in the pleadings and briefs as "the Jackson County Farm" or "the farm." The District Court's analysis is supported by Kindsfather's own testimony. Kindsfather makes several unsupported and inaccurate conclusions of law, but does not address the accurate legal analysis presented in the court's Order.

In order to be identified as an indispensable party, a party must have an interest in the disposition of the controversy. Iowa R. Civ. Pro. 1.234. The only authority Kindsfather cites in support of her argument, a portion of *dicta* from the 1909 case of *Corbin v. McAllister*, has nothing to do with the facts of the present case. Kindsfather claims that in *Corbin*, the Court found that a son who had received title from the decedent was an indispensable party to that proceeding. *See* Appellant's Br. at 14 (citing *Corbin v. McAllister*,

120 N.W. 1054, 1058). But in *Corbin*, the son received title not from the decedent, but from the decedent's transferee. The Court held that an action against the original transferee (the son's father) could not affect the subsequent rights of the son. The Court never addressed the question of whether the son was an indispensable party. *Id*. Rather, the district court concluded that that the son's rights "could not be impaired in an action against his grantor to which he was not a party." *Id*.

Even more critically, Judy Shreve currently has no rights in any property that might be impaired by any decision this Court makes. Kindsfather introduced significant evidence establishing that Shreve *never* had or wanted to have an interest in the property. *See* Findings of Fact, Conclusions of Law, and Ruling at 14–15 (App. at 65) (citing the considerable evidence that led the Court to conclude that "there is no evidence of an interest of Shreve in the property at relevant times; nor that Shreve's absence will prevent the Court from rendering any judgment between the parties before it").

In her appellate brief, Kindsfather, for the first time, makes a belated attempt to construct a strawman argument by pointing out

that Kindsfather testified that she had no control over the transaction between Glaser and Shreve. Appellant's Br. at 13. The district court's conclusion that Shreve had no interest in the property at relevant times does not rely on concluding that Kindsfather engineered the transaction, though, ironically, Kindsfather (who, as the district court noted, frequently testified inconsistently) also testified that she actually *did* engineer the transaction. Kindsfather Deposition, ("Gus [Glaser] wanted me to have the farm, and I asked my mom if I could put it in her name."). In relation to the Jackson County Farm, the district court found "Kindsfather's testimony about all the transactions and financial matters to be selective in detail, mostly vague and not to be credible." Dist. Ct. Order at 10 (App. at 60).

Kindsfather's further legal conclusion, that "Shreve's right to the farm after the Warranty Deed . . . was recorded could not be impaired in this action solely against Kindsfather when Shreve was not a party," is based on the theory that Shreve currently has a right that *can* be impaired. Yet, Shreve never had or wanted a right to the property, and she certainly does not have a right to the property now.

To the extent this Court elects to consider arguments regarding the purported warranties issue, in her own testimony, Kindsfather explicitly disavowed any warranties implicit in her deed from Shreve. Kindsfather testified that she promised her mother that Shreve would have no responsibility for the property. Further, it is evident from the record that Shreve was merely acting as an agent for Kindsfather. In her deposition, Kindsfather testified,

> A. Gus [Glaser] wanted me to have the farm, and I asked my mom if I could put it in her name.
> Q. Okay. Why did you put it in your mother's name?
> A. Because my ex had – they had foreclosed on the restaurant we had, and he hadn't changed it yet. He hadn't done anything to get my name off of it like he was supposed to yet, and I didn't want to hurt the farm.
> Q. So this is something you and Gus had talked about as far as transferring the farm from him to you?
> A. He wanted me to have the farm.
> Q. What conversations had you and Gus talked about as far as transferring the farm from him to you?
> A. He wanted me to have the farm.

Kindsfather Deposition at 80:13-81:3 (App. at 227).

The district court drew its factual conclusions from the clear weight of the evidence. *See* Dist. Ct. Order at 15 (App. at 65). "[A]ll parties . . . agreed that Shreve held the farm only for a short time 'for' Kindsfather. Shreve did not pay property taxes on the farm, did not

enjoy the use of the property, and requested the property be transferred out of her name when she became concerned that it might complicate her own personal financial matters.") The district court's legal conclusions are consistent with Iowa Rule of Civil Procedure 1.234, in that Shreve would only be indispensable if her "interest is not severable, and the party's absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court." I. R. Civ. P. 1.234(2). The district court accurately concluded that Shreve has no interest in the Farm, let alone any interest that would be inequitably affected by its judgment. The decision should be affirmed.

II. The District Court did not err when it concluded that the Administrator's claim is not barred by the "clean hands doctrine."

A. Scope and Standard of Review

The Administrator and the Department agree that the Administrator's motion was an equitable action under Iowa Code 633.33 and 633.368. Further, pursuant to Iowa Rule of Appellate

Procedure 6.907, the review of this Court in equitable actions is generally de novo.

Kindsfather also notes that in equitable actions, this Court gives weight to the district court's factual findings, though it is not bound by them. *See Coyle v. Kujacznski*, 759 N.W.2d 637, 638 (Iowa App. 2008) (miscited as 657, 658). However, this Court further noted that, "Because the district court had the witnesses before it, we think it was in a far better position to judge their credibility." *Opperman v. M & I Dehy, Inc.*, 644 N.W.2d 1, 3 (Iowa 2002).

B. **Preservation of Error.**

Kindsfather raised this issue for the first time in her post-trial brief, as she acknowledges in her brief. *See* Appellant's Br. at 17. As a result, the Administrator and the Department had no opportunity to present evidence regarding the issue to the district court.

C. **Analysis.**

Kindsfather's argument seems to be as follows: Glaser committed fraud. Principles of equity prevent the courts from protecting individuals who commit fraud. The Administrator "steps in the shoes" of the decedent, so Glaser's fraud should be imputed to the

Administrator. Thus, the principles of equity should prevent the courts from protecting the Administrator, even if that means protecting Kindsfather, who was an active party to that fraud.

A. The Probate Code explicitly anticipates an Administrator's recovery of property fraudulently transferred by a decedent.

Kindsfather fails to consider that it is the Administrator who is charged by law with making the creditors of Glaser whole, as much as possible. The Probate Code explicitly states that "[t]he property liable for the payment of debts and charges ... [against an estate shall] include all property transferred by the decedent with intent to defraud the decedent's creditors or any of them." Iowa Code § 633.368. To contradict the statute, Kindsfather cites to the 1947 case of *Shaw v. Addison*, 28 N.W.2d 816 (Iowa 1947). However, Iowa Code § 633.368 was passed in 1963 and would directly abrogate *Shaw*, even if Kindsfather's reading of *Shaw* was accurate.

Kindsfather cites no authority for the proposition that the doctrine of clean hands supersedes the administrator's responsibility to include all fraudulently transferred property in the estate. *See* Iowa Code § 633.368. The cases Kindsfather cites that post-date *Shaw* do

not involve an administrator of an estate, but rather transfers between living people where the plaintiff committed a fraudulent act. *See Sisson v. Janssen*, 56 N.W.2d 30, 34 (Iowa 1952) (involving two men the Court found to have engaged in fraud together, and concluding that the Court need not determine which of the two cheated the other, as both intended to cheat a third party); *Opperman v. M&I Dehy, Inc.* 644 N.W.2d 1, 2–3 (Iowa 2002) (denying relief to any of the living parties based on the "clean hands" maxim, but not dealing with an administration of an estate). To the extent Kindsfather argues that equitable principles somehow prevail over the plain statutory language, she fails to harmonize her equity-based complaint with the Administrator's statutory responsibility.

When a court is sitting in equity, it is "afforded some flexibility in determining the equities between the parties. Such courts are, however, bound by statute, and in the absence of fraud or mistake, equity must follow the law." *Kuehl v. Eckhard*, 608 N.W.2d 475, 477 (Iowa 2000). This principle is well-established in Iowa law. *See, e.g. Clark v. Thompson*, 37 Iowa 536, 540 (1873) ("It is not within the jurisdiction of equity to set aside statutes.")

B. Kindsfather's analysis confuses the Administrator with the heir.

The Administrator, Judy Bowling, is Glaser's cousin. As a result, she may be an heir under Iowa's intestacy statute. Yet, this action was not brought by her to realize an inheritance. Motion to Set Aside Conveyances (App. at 9-25). In fact, with the number of creditors and the size of their claims, in addition to the fact that there are other possible heirs, it is uncertain if she will receive anything as a beneficiary of the estate. As an heir, Bowling would not even have standing to bring a claim. *See Am. Ins. Co.* at 48 ("The heirs of an alleged fraudulent grantor are not even proper parties to an action by an administrator to set aside a conveyance as being fraudulent as to creditors.")

In light of the clear language of Iowa Code § 633.368, *Shaw v. Addison* can stand for no more than the proposition that an heir cannot bring a fraudulent conveyance action exclusively to benefit that individual in her role as an heir. The *Shaw* court found that "a court of equity will not grant relief from such fraudulent conduct on behalf of either the grantor, or his heirs or assigns." *Shaw*, 28 N.W.2d at 827. In *Shaw*, the estate had an approximate value of $75,000, and

the sole heir of the estate sought to recover from the decedent's sister an additional $300,000 in assets he had transferred to her in his lifetime. *Id*. No creditors appeared in the action, and the daughter of the decedent was attempting to get this property reconveyed to the estate so that she, as heir, could benefit. *Id*.

This is not the case here. The Department requested the Administrator file the claim under her statutory authority in order to preserve its rights as a creditor. The Administrator complied with the request to fulfill her responsibility as Administrator. There is no evidence to the contrary in the record.

Cases decided prior and subsequent to *Shaw* also bring Kindsfather's interpretation of *Shaw* into question. "In Iowa, it is well established that an administrator may bring an action to challenge a conveyance or transfer as being fraudulent as to creditors. *Am. Sur. Co. of New York v. Edwards & Bradford Lumber Co.*, 57 F. Supp. 18, 29 (N.D. Iowa 1944) (citing Iowa Supreme Court cases from 1933, 1901, 1870, and 1875); *Carson v. Rothfolk*, 838 N.W.2d 868 (Iowa Ct. App. 2013) (considering a claim of fraudulent conveyance brought by the executor of his father's estate).

C. Principles of equity overwhelmingly favor Glaser's defrauded creditors over his co-conspirator.

The record is replete with evidence that Kindsfather conspired with Glaser to defeat the interests of his creditors. "In manner, demeanor and substance, the Court found Kindsfather's testimony about all the transactions and financial matters to be selective in detail, mostly vague and not to be credible." Dist. Ct. Order at 10 (App. at 60). The Supreme Court has noted that while it is not bound by the district court's findings of fact, it does give weight to them, and it is "especially deferential to the district court's assessment of witness credibility." *Perkins v. Madison Cty. Livestock & Fair Ass'n*, 613 N.W.2d 264, 267 (Iowa 2000).

The district court recounted in some detail the involvement Kindsfather had with the fraudulent transactions executed by Glaser designed to avoid creditors. Perhaps most egregiously, she accepted mortgages to assist Glaser in evading his creditors, falsely claiming that she had completed hundreds of thousands of dollars of work to justify the acceptance of these mortgages. *See* Dist. Ct. Order at 5 (App. at 55). Yet, she "provided no details or documentation of the extent of her work, how many hours on average per week she

dedicated to the work, any particular sales or amounts of sales or any other details with respect to such transactions." *Id.* at 9 (App. at 59).

The clean hands doctrine specifically exists to allow the Court to avoid being used by a litigant 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." *Opperman v. M&I Dehy, Inc.*, 644 N.W.2d at 6.

The principles of equity charge this Court, within the bounds of statute, to avoid rewarding "unconscionable conduct." *See Meyers v. Smith*, 208 N.W.2d 919, 921 (Iowa 1973). The clean hands doctrine is ordinarily invoked "to protect the integrity of the court where granting affirmative equitable relief would run contrary to public policy or lend the court's aid to fraudulent, illegal or unconscionable conduct." *Id.* It is ironic, then, that Kindsfather is requesting the Court apply the doctrine to benefit her to the detriment of the decedent's creditors in a situation where the trial court found her to be complicit in assisting the decedent to defraud his creditors. An additional equity doctrine, the "maxim that he who seeks equity must do equity" holds that "a person cannot expect a court of equity to enforce an agreement made with the intent that it shall operate as a

fraud on the private rights and interests of third persons or the public generally." *Id*.

Fraudulent transfer law has always operated based on equitable principals that serve to protect creditors from debtors who attempt to hinder the rights of those creditors. *See Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 883 (Iowa Ct. App. 1996) ("The [fraudulent conveyance] doctrine is built upon the principal that a debtor's property constitutes a fund from which debts should be paid and the debtor may not hinder a creditor's right to proceed against the fund. A debtor who disposes of property with the intent to defraud creditors exceeds legitimate authority. The transaction will be set aside as inequitable.")

The grantee also bears responsibility for ensuring that the transfer is not fraudulent. A transfer made without consideration and under suspicious circumstances triggers the requirement that the grantee should inquire into the possibility of fraud. *McNally v. Emmetsburg Nat. Bank*, 192 N.W. 925, 927–28 (Iowa 1923). Even if Kindsfather did not know explicitly that Glaser was transferring property to her to defraud his creditors—a questionable proposition

given the evidence supporting her complicity—she had a duty to inquire. Even a cursory review of the public records of the properties he transferred to her would make it clear that he was executing deeds to her to avoid creditors. *Compare* Report of Title (App. at 119) (State tax lien against Glaser's property, dated January 7, 2008) to Exhibit 3 (App. at 156) (Warranty Deed conveying Lot 12, 812 Country Club Drive from Glaser to Kindsfather, dated January 8, 2008).

The district court found Kindsfather was complicit in Glaser's attempts to defraud his creditors. *See* Dist. Ct. Order at 21 (App. at 71) ("The Court also 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.") The district court also found that parties with undisputedly clean hands—the creditors of the estate—would be prejudiced if the transfers stand. *See id.* at 20 (App. at 70) ("Most of the Estate's creditors, including the Iowa Department of Revenue, will not be paid if the property that was fraudulently conveyed is not returned to the Estate for proper distribution.").

Principles of equity and protection of the public do not require Kindsfather's fraudulent behavior to be rewarded. On the contrary, the principles of equity—including the clean hands doctrine—require this Court to affirm the ruling of the district court and provide relief to the creditors fraudulently deprived of property.

III. The District Court did not abuse its discretion when it granted the Administrator's oral motion to include the Farm in its motion.

Kindsfather raises five separately-numbered claims of error regarding the question of whether the district court erred by considering the question of the fraudulent conveyances of the Jackson County Farm. The Administrator and the Department consolidate these here under headings III and IV. It is critical to note, though, that Kindsfather must prove the district court erred *both* by determining that the Administrator's original pleading encompassed the farm *and* by allowing the Administrator's oral motion to amend. Under either scenario, the district court had authority to adjudicate the Administrator's claim as to the Farm and to void all conveyances related to the Farm. The other claims of error are merely consequences of the trial court's determinations on these two issues.

A. Scope and Standard of Review

Kindsfather correctly notes that the standard of review on a motion for leave to amend is abuse of discretion. However, Kindsfather neglects to specify what an extremely difficult bar this standard of review is for an appellant to clear.

> We afford district courts considerable discretion in ruling on motions for leave to amend pleadings. Consequently, we will reverse only if the record indicates the court clearly abused its discretion. We will find an abuse of discretion when the court bases its decision on clearly untenable grounds or to an extent clearly unreasonable.

Rife v. D.T. Corner, Inc., 641 N.W.2d 761, 766 (Iowa 2002). The Iowa Court of Appeals has also emphasized that, "The trial court will be reversed only when there is a clear abuse of discretion." *Grace Hodgson Tr. V. McClannahan*, 569 N.W.2d 397, 399 (Iowa Ct. App. 1997).

B. Preservation of Error.

The Administrator and the Department of Revenue agree that this issue was preserved for review.

C. Analysis

From the time the Administrator filed her motion asking the district court to void fraudulent transfers, all parties knew what was

at issue—Glaser and Kindsfather's joint scheme to transfer Glaser's real estate to defraud Glaser's creditors. While the Administrator's initial pleading listed some, but not all, of the transactions that constituted this fraudulent scheme, the extent of the fraudulent conveyances was made clear through discovery and came as no surprise to any of the parties. The district court found that "through the motion to set aside conveyances, through her knowledge of the conveyances, and through questioning in her deposition," Kindsfather was on clear notice that the claim involved *all* of the fraudulent conveyances, including the fraudulent conveyance of the property known as the Jackson County farm. Dist. Ct. Order at 13 (App. at 63). Though not necessary in light of this notice, the district court also granted the Administrator's motion to amend its pleadings consistent with the evidence.

Kindsfather makes two claims of error related to the district court's ruling on the Administrator's leave to amend. First, she simply argues that the trial court abused its discretion. *See* Appellant's Br. at 28 (claim of error designated as V). Secondly, she argues that the trial court abused its discretion when it ruled that the amendment

related back to the original pleading. *See id.* at 38 (claim of error designated as VI).

1. The law highly favors allowing amendments.

The purpose of requiring leave of court to amend is simply "to give the other side the right to object to amendments which might affect their preparation for trial." *McClannahan,* 569 N.W.2d at 399. Allowing amendments is highly encouraged and denying permission to amend is discouraged, as the standard is to allow amendments when "justice so requires." *Id*.

The Supreme Court has adopted such an expansive view of when amendments should be allowed that it has said that an amendment may be allowed "at any time before a decision is rendered, even after the close of presentation of the evidence." *Rife,* 641 N.W.2d at 767. Generally, the amendment should "not substantially change the issues or defense of the case," but "[e]ven an amendment that substantially changes the issues may still be allowed if the opposing party is not prejudiced or unfairly surprised." *Id.* Allowing the amendment to address the Jackson County Farm neither impacted Kindsfather's trial preparation nor caused her

unfair surprise.

2. The Administrator's allegation that the Jackson County Farm was fraudulently conveyed was not a surprise, nor did it prevent Kindsfather from being adequately prepared for trial.

On April 5, 2018, Kindsfather filed a motion in limine, with supporting memorandum, asking the district court to forbid the Administrator and Department from presenting evidence regarding the Jackson County Farm. This was six weeks before the date of the hearing and confirms that Kindsfather had ample notice of the claim to adequately prepare. The district court also made detailed findings of fact regarding the Administrator's initial motion, finding that it was detailed enough to make Kindsfather aware of the Administrator's fraudulent transfer claim involving the Jackson County Farm on June 28, 2016. In addition, Kindsfather was on notice due to the extensive questioning regarding the farm at her deposition more than a year prior to trial. *See* Dist. Ct. Order at 13 (App. at 63). Finally, as Kindsfather was intimately involved with the fraudulent transfers related to the Farm, she knew these transfers were part of Glaser's overall scheme to defraud his creditors.

Kindsfather complains extensively that she did not have the

opportunity to call witnesses or introduce documents related to the transfer of the Farm, but does not explain why she did not have this opportunity. *See* Appellant's Br. at 32. In fact, her own motion filed six weeks before trial shows that she had ample time to prepare any witnesses and documents related to the Farm. The district court denied the motion, determining that evidence related to the Farm would be admissible, *before trial began*. The district court's well-supported findings demonstrate Kindsfather had ample notice that the transfer of the Jackson County Farm would be at issue.

3. The Administrator proved the fraudulent conveyance requirements related to the Jackson County Farm.

Kindsfather alleges that the amendment is not actually supported by the proof offered. *See id.* at 33. Then, she proceeds to ignore the majority of the record and the district court's order in order to support this statement.

Despite Kindsfather's claim that there was no evidence of insolvency in the record, the district court recounted the Administrator's evidence demonstrating that Glaser was insolvent. The district court detailed Glaser's interactions with the Iowa Department of Revenue, concluding that "the Court finds it was clear

to Glaser for many years, dating back to at least 2007, that he had tax liabilities and the State was pursuing him for back taxes." Dist. Ct. Order at 4 (App. at 54). Though Kindsfather cites to her own testimony in the record regarding Glaser's financial affairs, in which she speculates about Glaser's pensions and house equity, the district court noted, "Kindsfather testified she knew very little about Glaser's financial arrangements, holdings and debt. The district court found Kindsfather's testimony in connection with such matters to lack credibility in substance and demeanor." *Id.* at 9 (App. at 59). The district court's factual findings as to Glaser's insolvency dating back to 2007 were well-supported by the record.

The Administrator proved that Glaser was "generally not paying [his] debts as they [became] due," the only statutory requirement to establish a presumption of insolvency. *See* Iowa Code § 684.2. Kindsfather's unreliable, inconsistent, and vague testimony is not sufficient to overcome this presumption of insolvency, as the district court correctly concluded. Specifically, Kindsfather never introduced competent evidence as to Glaser's assets, expenses, income, or liabilities.

The Administrator proved, and the district court found, that there was substantial proof of fraud when Glaser transferred the farm to Shreve.

> Kindsfather testified that it was Glaser's intent that his interest in the farm eventually go to Kindsfather, but Glaser and Kindsfather were concerned that a creditor would attach a lien to the property if it went directly to Kindsfather, because of a foreclosure on a restaurant in which Kindsfather then had an ownership interest. *See* Exhibit 21, Kindsfather deposition, p. 80, lines 6-25, p. 82, lines 22-25. Kindsfather did not offer any explanation why Glaser could not hold title to the property in his own name until Kindsfather was ready and able to take title in her name. From the evidence it seems clear, and the Court finds and concludes, that Glaser's intention was to shield the asset from *his* creditors, and that conveyance to Shreve also served to shield the asset from Kindsfather's creditors.

Dist. Ct. Order at 14 (App. at 64).

4. The district court correctly applied the relation-back doctrine, which confirmed that the Administrator successfully filed her petition within the applicable statute of limitations.

Kindsfather attempts to make much of the district court's inadvertent pluralization of the word "occurrence" in citing Iowa Rule of Civil Procedure 1.402(5) to argue that the district court erred in allowing the Administrator's oral motion. *See* Appellant's Br. at 40. She then argues in a separate claim of error (VII) that the district 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."

Kindsfather addresses the question of whether the Administrator had constructive notice of the fraudulent transfer in some detail, but does so unnecessarily. Neither the Administrator nor the Department have alleged that the "discovery rule" should apply here, nor did the district court rely on the discovery rule when it applied the relation-back doctrine.

Kindsfather provides no analysis or legal citation on why the Court erred in determining that the relation-back doctrine should apply, other than simply noting the district court inadvertently pluralized the term "occurrence." The district court entered findings of fact, supported by undisputed evidence in the record, regarding the series of transactions related to the farm in its discussion of Kindsfather's related claim that her mother, Judy Shreve, is an indispensable party to this action. The farm went first from Glaser to Shreve, with the intention that Shreve hold the property in trust for Kindsfather as a method of shielding the farm from both Kindsfather's and Glaser's creditors. *See* Dist. Ct. Order at 14 (App. at

64). This transfer, however, was neither the beginning nor the end of Glaser's and Kindsfather's series of transactions designed to defraud Glaser's creditors. The Iowa Department of Revenue filed a state tax lien on Glaser's properties on January 7, 2008. *See* Joint Stipulation of Uncontested Facts at 1 (App. at 47). On January 8, 2008, Glaser executed a warranty deed transferring and conveying Lot 12, 812 Country Club Drive, to Kindsfather. Appendix A (App. at 232). The district court detailed the subsequent transactions in its order. *See* Dist. Ct. Order at 4-6 (App. at 54-56). The fraudulent transactions continued until at least November 19, 2012. *Id.* at 6 (App. at 56). They also included a series of fraudulent mortgages. Appendix A, Administrator's Post-Trial Brief (App. at 232).

The guiding principle under Iowa law in determining whether an amendment will relate back for statute of limitations purposes is whether Kindsfather had sufficient notice regarding the claims of the Administrator relating to the farm. *See Rieff v. Evans*, 630 N.W.2d 278, 288 (Iowa 2001), as amended on denial of reh'g (July 3, 2001) (The relation back rule is founded on notice. This is to ensure that any amendment to a pleading made after the statute of limitations has

expired does not cause the type of prejudice to the defendant sought to be avoided by the statute of limitations.")

Iowa courts have consistently stated that the rules of pleading exist "to provide notice and to facilitate a fair and just decision on the merits of the case." *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 490 (Iowa 2000). The reason that Iowa courts have adopted such a permissive standard for amendment of pleadings is to ensure that pleading rules do not "allow a mistake in a pleading to determine the outcome of a case." *Id*. The central question this Court must answer in determining whether to allow the amendment to relate back to the filing of the original pleading is whether it offends the policies underlying the statute of limitations—specifically whether the amendment would impact Kindsfather's ability to conduct a defense on the merits. *See id*. "Conversely, if the amendment does not offend the policies of the statute of limitations, it should relate back to the original pleading to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors." *Id*.

The Administrator's request to amend the pleadings to more explicitly include the Jackson County Farm in her original pleading is exactly the type of amendment that the relation-back doctrine is intended to facilitate. The district court found, based on overwhelming direct evidence, that Glaser and Kindsfather engaged in a scheme to defraud his creditors. Kindsfather attempts to avoid a fair and just decision on the merits of the case by exploiting a lack of explicitness in the pleadings to shield what the district court found to be a fraudulent transfer. This technical—albeit inaccurate—reading of the Rule would lead to the Court enriching Glaser's co-conspirator at the expense of his fraud victims.

Unfortunately, Kindsfather is not saved by the "technicality" she ineffectively attempts to exploit. Glaser's conduct in engaging in fraudulent transfers and falsified mortgages began in 2008 and continued until virtually the day he died, when the suicide note he delivered to Kindsfather included steps she should take to defraud the bank that was foreclosing on his house; measures to continue to defraud the creditors who had liens attached to the property he had already fraudulently conveyed to her; and an additional mortgage to

execute to defraud any potential creditors who might attempt to attach liens after his death. Dist. Ct. Order at 16 (App. at 66).

Rule 1.402 does not provide a definition of conduct, but consistent application of the term in both state and federal courts applying it demonstrate that it was never intended to refer to a single discrete act. *Reiff*, for example, refers to "conduct" as more than a single discrete act. *Reiff*, 630 N.W. 2d at 289 ("Clearly, the class claims arise out of the same conduct and transactions enunciated in the derivative claims.") Similarly, *Black's Law Dictionary* defines "conduct" as "collectively, a person's deeds." *Black's Law Dictionary* (11th ed. 2019).

In analyzing the comparative federal Rule, the Fifth Circuit reiterated what the Iowa Supreme Court has consistently said—that an amendment should not relate back "if the alteration of a statement of a claim contained in an amended complaint is 'so substantial that it cannot be said that the defendant was given adequate notice of the conduct, transaction or occurrence that forms the basis of the claim or defense." *F.D.I.C. v. Conner*, 20 F.3d 1376, 1386 (5th Cir. 1994). As previously noted, Kindsfather had documented notice of the

Administrator's contention that the Jackson County Farm was fraudulently conveyed over a year prior to trial, and the evidence to prove up the fraudulent conveyances on the other properties was substantially identical as the evidence to prove up the fraudulent conveyance of the Farm.

The Fifth Circuit in *FDIC* went on to explain that "the best touchstone for determining when an amended pleading relates back to the original pleading is the language of [the Rule]: whether the claim asserted in the amended pleading arises 'out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." *Id*. In *F.D.I.C.*, the Fifth Circuit allowed the F.D.I.C. to amend its complaint to include additional instances of loans that were similar to the loans that were included in their original complaint. *Id*. "The conduct identified in the original complaint that allegedly caused the defendants to approve the loans listed in that pleading also allegedly caused the defendants to approve the loans that the FDIC seeks to include in this case through the amended complaint." *Id*.

Other courts who have considered similar issues related to the definition of "conduct" have agreed with the substance of this analysis. The Southern District of Ohio considered an amendment that would have added a claim of "padded charges" to a claim of other wrongful attorney's fees. *Scott v. Fairbanks Capital Corp*, 284 F. Supp. 2d 880, 886 (S.D. Ohio 2003). The Southern District concluded that these "padded charges. . . . arose out of the same mortgage loans, foreclosure proceedings, forebearance agreements, and payoff statements as the attorney's fees. Thus, . . . it is clear that Plaintiffs' proposed claims are based upon the same general conduct that formed the bases for their attorney's fees claims."). Similarly, the Sixth Circuit allowed an amendment that contained "new operative facts," finding that despite these newly-alleged facts, they arose out of the same "conduct, transaction, or occurrence as the original complaint." *Miller v. Am. Heavy Lift Shipping*, 231 F.3d 242, 249 (6th Cir. 2000).

Kindsfather attempts to persuade this Court to read the Rule so narrowly that it would disclude the Administrator's claims regarding the farm. Neither the Administrator nor the Department located any

cases where a court read the Rule as narrowly as Kindsfather proposes it be read, despite the ubiquitousness of this language in both state and federal rules of civil procedure. This makes sense. As the U.S. Supreme Court noted, "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end." *Maty v. Grasselli Chem. Co.*, 303 U.S. 197, 201 (1938). "Amendments in causes where the statute of limitations has run will not as a rule be held to state a new cause of action if the facts alleged show substantially the same wrong with respect to the same transaction . . . or if the gist of the action or the subject of the controversy remains the same; and this is true although the alleged incidents of the transactions may be different." *Id.*

The Iowa Supreme Court has embraced this liberal approach to amending pleadings in the interest of achieving justice, even days after the conclusion of the trial. *See Smith v. Vill. Enterprises, Inc.*, 208 N.W.2d 35, 37 (Iowa 1973). "The court, in furtherance of justice, may allow later amendments, including those to conform to the proof and which do not substantially change the claim or defense" *Id.*

Kindsfather cites to *Matter of Estate of Workman* (erroneously cited as *Workman v. Workman*) for the accurate proposition that occasionally, courts should deny requests to amend the pleadings. She does not, however, relate the *Workman* court's findings to the facts here. In fact, the Court denied an amendment that "would have changed the issues and unfairly prejudiced [one of the litigants]." *Matter of Estate of Workman*, 903 N.W.2d 170, 178 (Iowa 2017). The Court then described how, during the course of the proceedings, the litigant requesting leave to amend had actually disclaimed in testimony that he was seeking the relief that he requested to amend his pleadings to reflect. *Id*. Only after his pled theory was discredited during trial did he attempt to switch to an entirely incompatible theory of recovery. *Id*. Allowing the amendment "would have required a different line of questioning and proof." *Id*. This situation is dissimilar to the Administrator's motion to amend, where the fraudulent transfer of the farm was only one in a series of related fraudulent transactions, and Kindsfather had been on explicit notice for over a year that the Administrator intended to present proof of the fraudulent transactions related to the farm at hearing.

IV. The District Court correctly concluded that the Administrator's original motion provided it jurisdiction to adjudicate the Administrator's claim regarding the Farm.

As noted in the introductory note to Point III, in order for this Court to conclude that the district court did not have authority to void the transfers related to the farm, Kindsfather must prevail in establishing that the district court erred **both** in allowing the Administrator's motion to amend the pleadings and in its conclusion that the Administrator's original motion provided it jurisdiction to adjudicate the Administrator's claim regarding the Farm.

A. Standard and Scope of Review

The Administrator and the Department of Revenue agree that the Administrator's motion was an equitable action under Iowa Code 633.33 and 633.368. Further, pursuant to Iowa Rule of Appellate Procedure 6.907, the review of this Court in equitable actions is generally de novo.

B. Preservation of Error

The Administrator and the Department of Revenue concur that this issue was preserved.

C. Analysis

The Administrator's motion alleged a series of fraudulent transactions. Though the Jackson County Farm was not specifically included in this list in the original petition, the evidence at hearing established that it was part of this larger series of fraudulent transactions. Additionally, in the prayer for relief, the Administrator specifically asked that the "Court set aside the conveyances of the Decedent and include the Property transferred by Decedent within three (3) years of his death, . . . and for other and further relief as is just and equitable in the premises." The Jackson County property was transferred from Glaser to Shreve on September 9, 2011. Exhibit 8 (App. at 186). Glaser died on September 9, 2014, exactly three years later. Administrator's Motion at 1 (App. at 9).

Kindsfather argues that the district court did not have jurisdiction of this issue because the Farm was not explicitly mentioned in the original pleading. This argument is not consistent with notice pleading, which, as the district court noted, "need not allege the ultimate facts to support each element of a cause of action." Rather, it must only "contain factual allegations sufficient to give the

defendant fair notice of each claim asserted so the defendant can adequately respond." *Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127-28. As noted elsewhere and detailed by the district court order at 13 (App. at 63), Kindsfather can hardly claim surprise that the Administrator would present evidence to support her allegation that the farm had been fraudulently transferred, nor that the Administrator would ask for the district court to provide equitable relief for the defrauded creditors rather than allow Glaser's co-conspirator to continue to enjoy the fruits of her fraudulent activity.

Courts have long held that a court sitting in equity must construe pleadings liberally under Iowa's notice pleading rules, "and will often justify granting relief in addition to that contained in the specific prayer, provided it fairly conforms to the case made by the petition and the evidence." *Lee v. State*, 844 N.W.2d 668, 679 (Iowa 2014).

Kindsfather cites to *Estate of Randeris v. Randeris* for support that actions not contemplated by the pleadings are not properly within the jurisdiction of the probate court. *See* Appellant's Br. at 22; *See* 523 N.W.2d 600, 604 (Iowa Ct. App. 1994). However, she does

not provide context to that court's determination. The *Renderis* court noted that the district court sitting in probate "has plenary jurisdiction to determine matters essential to probate business before it." *Id*. The Jackson Farm transaction certainly meets this criteria. But, as Kindsfather noted, "the jurisdiction of a court can ordinary be exercised only within the scope of the pleadings." *Id*. While technically accurate, the *Renderis* court gave a much broader definition of the "scope of the pleadings" than Kindsfather argues that it did. Appellant's Br. at 22. Kindsfather, in fact, states, without citation to authority that, "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." *Id*. at 23 (emphasis in original). Yet, even the case she cites found that the reason that the property transfers at issue were outside of the scope of the pleadings is that, "The evidence offered at the hearing regarding the competency of the decedent prior to his death related to the reasonableness of [the executor's] failure to pursue action to challenge the deeds and did not justify a trial over the validity of the deeds." *Id*. The *Renderis* court found that the probate court did not

have jurisdiction over the question because the probate court did not take evidence specifically on the question of the validity of the deeds, but rather on the executor's failure to challenge the deeds. *Id*. Further, the pleadings were not broad enough to give the parties notice that the court would consider this question. *Id*.

This is consistent with other Iowa jurisprudence providing broad relief based on the pleadings in order to address the equities, even when the pleadings are not perfect. *See Anderson v. Yearous*, 249 N.W.2d 855, 859 (Iowa 1977) ("Plaintiffs seek other relief as is just. In this regard we had held appropriate redress may be had upon facts pled and proved, even though such relief has not been specifically sought. It is also well settled such a prayer is to be liberally construed and will often justify a grant of relief in addition to that contained in the specific prayer, provided it fairly conforms to the case made by pleadings and proof"); *Batinich v.Renander*, 899 N.W.2d 741 (Iowa Ct. App. 2017) ("In Iowa, our notice-pleading rules allow for a liberal interpretation of a party's prayer when general equitable relief is requested. If the relief requested in addition to that contained in the specific prayer fairly conforms to the case made by

the petition and the evidence, such relief will generally be granted.").

A court can gain jurisdiction over matters when they are pled or when they are tried by the consent of the parties. The Administrator and Department of Revenue agree that Kindsfather did not consent to trial of these issues. However, the pleadings were broad enough to give the district court jurisdiction.

The Iowa Court of Appeals explained the reason why the court is generally restricted to those issues raised in the pleadings or tried by consent of the parties as a jurisdictional matter. *Matter of Estate of Day*, 521 N.W.2d 475, 478-79 (Iowa Ct. App. 1994). "Due process implications loom when a court goes beyond the pleadings," so the inquiry as to whether the district court has jurisdiction turns on whether Kindsfather had adequate notice that the district court would consider the conveyances related to the farm. *See id*. "General prayers are liberally construed and allow the court to grant relief beyond what is specifically requested." *Id*.

The district court had discretion to find that the Administrator's prayer for relief was broad enough to encompass the Farm conveyance issues. This Court should affirm that finding.

V. The Trial Court accurately found that neither Kindsfather nor Randall had a right to claim a homestead exemption.

A. Scope and Standard of Review.

The standard of review is for correction of errors at law. The Administrator and the Department of Revenue agree that the Administrator's motion was an equitable action under Iowa Code 633.33 and 633.368. Further, pursuant to Iowa Rule of Appellate Procedure 6.907, the review of this Court in equitable actions is generally de novo. However, since Kindsfather brings a claim of error based on the interpretation of statute, this Court's review is for correction of errors at law. *See Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014) ("Generally, we review equitable proceedings de novo. Because this dispute raises an issue of statutory interpretation, however, our review is for correction of errors at law.") (citation omitted).

B. Preservation of Error

The Administrator and Department of Revenue agree that error was preserved on this issue.

C. Analysis

In order to make an argument here, Kindsfather completely mischaracterizes the district court's ruling and simply jousts against the strawman she has constructed. She cites cases that discuss the importance of the homestead exemption and concludes that the "trial court erred when it ruled that Kindsfather lost the homestead exemption because she participated in a conspiracy with Glaser." Appellant's Br. at 69.

The clear language of the district court's findings of facts and conclusions of law demonstrate that the district court *did not find* that Kindsfather "lost the homestead exemption." Rather, the district court stated,

> The Administrator and State contend that the homestead exemption is not relevant to and is inapplicable to the situation here. . . The Court finds and concludes that the position of the Administrator and State are well-taken. There can be no homestead right without ownership of the homestead property, and there is no intent that a homestead interest can be created or maintained with wrongfully appropriated property. *See Cox v. Waudby*, 443 N.W.2d 716, 719 (Iowa 1988). The Court agrees with the Administrator and State that, if the Court finds that the properties were transferred fraudulently, neither Kindsfather nor Randall would own the properties. Conversely, if the Court finds that the Administrator and State have failed to meet their burden of establishing fraudulent transfer of the properties, Kindsfather and Randall will maintain ownership of the properties and such

> properties will not be transferred into the Estate. Accordingly, the Court finds and concludes it is not necessary for the Court to address the homestead issue.

Dist. Ct. Order at 12 (App. at 62).

In the seven pages Kindsfather devotes to the discussion of the homestead exemption, she does not explain why Kindsfather and Randall would have a right to a homestead exemption if they never had an ownership interest in the property. This is the only question before this Court. As the district court found, no homestead right can be created or maintained with wrongfully appropriated property. Kindsfather does not argue with this conclusion. The district court did not err, and this conclusion should be affirmed.

VI. The Trial Court did not err in ordering that the fraudulent transfers be voided.

A. Scope and Standard of Review.

The standard of review is for correction of errors at law. The Administrator and the Department agree that the Administrator's motion was an equitable action under Iowa Code 633.33 and 633.368, and that, pursuant to Iowa Rule of Appellate Procedure 6.907, the review of this Court in equitable actions is generally de

novo. However, since Kindsfather brings a claim of error based on interpretation of statute, this Court's review is for correction of errors at law. *See Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014) ("Generally, we review equitable proceedings de novo. Because this dispute raises an issue of statutory interpretation, however, our review is for correction of errors at law.") (citation omitted).

B. Preservation of Error.

The Administrator and Department agree that this issue was preserved for review.

C. Analysis

Kindsfather attempts to confuse a straightforward issue and attempts to make an argument based in equity by characterizing the relief granted by the district court as "unfair, overly harsh, and inequitable." Appellant's Br. at 54. However, the district court found, based on the considerable evidence in the record, that Kindsfather was complicit with Glaser in defrauding his multiple creditors. Since Kindsfather does not challenge this finding, it is difficult to understand how it is unfair, harsh, or inequitable to

provide relief to the multiple creditors her fraudulent conduct deprived of their rightful property.

This entire section of Kindsfather's brief is based on a misstatement of facts. The Administrator requested the district court to set aside the fraudulent conveyances because she is statutorily required to marshal the assets of the estate for proper distribution, primarily to the many creditors that Glaser and Kindsfather defrauded. Thus, the question of whether liens are enforceable under Iowa Code 422.26 (or 421.26) is irrelevant to the question before this Court. It is the Administrator's responsibility to make determinations as to the validity of the liens against the property once the fraudulent transfers are voided.

The Uniform Fraudulent Transfers Act, codified as Iowa Code section 684, is the applicable law, as all transactions at issue occurred between Iowa's adoption of the Uniform Fraudulent Transactions Act in 1995 and the Uniform Voidable Transactions Act adopted in 2016. However, Iowa Code 422.26 has no application. (Kindsfather erroneously references Iowa Code 421.26 multiple times.) Though the Department is authorized to pursue

collection action under Iowa Code 422.26, this action was brought by the Administrator and joined by the Iowa Department of Revenue as an action alleging that properties were fraudulently transferred by the decedent to Kindsfather. Kindsfather's citation to Iowa Code 422.26 appears to be merely an attempt to obfuscate this Court's analysis.

Similarly, Kindsfather attempts to muddle the issues by invoking Iowa Code 684.7, which would govern if the Iowa Department of Revenue had brought an independent action under this section. This, however, is not what occurred. "On June 28, 2016, the Administrator filed a Motion to Set Aside Conveyance and Include Transferred Property in Estate Inventory. Such motion noted that it was filed by the Administrator, with standing to challenge the conveyances, at the request of the Iowa Department of Revenue to protect its interest as a creditor." Dist. Ct. Order at 2 (App. at 52).

All the arguments Kindsfather makes regarding the remedy the district court ordered relate specifically to the appropriate remedies if the Department brought the action independently.

The Department is not the only creditor that Glaser and Kindsfather defrauded. As the district court details, Glaser left a letter to Kindsfather describing some of the actions he took to defraud creditors, including the federal government and credit card companies. *See id.* at 8 (App. at 58). The district court summarizes, "From his writings it is clear that, prior to his death, Glaser was deeply indebted to certain creditors, including credit card companies, the federal government and Jackson County." *Id.* at 8 (App. at 58).

When the Department began to suspect that Glaser had fraudulently conveyed substantial property in order to avoid his state tax debt, it requested the Administrator fulfill her statutory responsibility and request the district court's intervention in marshalling the assets of the estate so that the defrauded creditors could be made whole to the extent possible. *See* id. at 2 (App. at 52) ("On June 28, 2016, the Administrator filed a Motion to Set Aside Conveyance and Include Transferred Property in Estate Inventory. Such motion noted that it was filed by the Administrator, with

standing to challenge the conveyances, at the request of the Iowa Department of Revenue to protect its interest as a creditor.")

Kindsfather seeks to limit the district court's authority in the way the statute never intended by failing to acknowledge that Iowa Code 684.7 specifically allows the Court to grant "any . . . relief the circumstances may require." Iowa Code § 684.7(c)(3). She does not explain how the district court erred in exercising the authority this statute grants it.

The Administrator has a duty to protect the assets of the estate for the benefit of the creditors and heirs of the estate, and she has statutory authority to bring an action in probate court in order to accomplish that end. *See* Iowa Code § 633.368. Iowa Code gives the probate court authority to fashion a remedy that provides relief the circumstances require. *See* Iowa Code 684.7(c)(3). The principles of equity mandate that the Court do justice, insofar as it does not contradict with statute. This is a long-held principle of Iowa jurisdiprudence. "The plenary power of a court of equity, to consider the substance rather than the form, and disregard the latter in arriving at the ultimate truth, in order to effectuate justice,

is well established. It is most frequently invoked when a question of fraud is involved." *First Tr. Joint Stock Land Bank of Chicago, Ill. v. Galagan*, 261 N.W. 920, 921 (Iowa 1935).

Here, the district court's plenary power derived from its equity jurisdiction harmonizes with the Administrator's statutory responsibilities. Glaser and Kindsfather worked together to steal substantial sums of money from Glaser's creditors. Denying relief to the innocent creditors in favor of Glaser's co-conspirator offends equitable principles and is contrary to the statutory scheme that seeks to protect creditors from this type of fraud. This Court must affirm the decision of the district court to grant the relief sought by the Administrator in fulfilling her responsibilities and making Glaser's creditors whole, to the extent possible.

CONCLUSION

The district court did not err in finding that the properties it declared void were fraudulently conveyed. Its decision should be affirmed in its entirety.

REQUEST FOR ORAL ARGUMENT

The Administrator and Department do not believe oral argument is necessary, but respectfully request to be heard in the event oral argument is granted.

Respectfully submitted,

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Dated: August 21, 2019

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on the 21st day of August, 2019 the foregoing document was filed via EDMS system to the Clerk of the Supreme Court of Iowa and service was made to the following via EDMS:

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___/s/Teresa Corbin_____