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 Reply Brief

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TABLE OF CONTENTS

page

TABLE OF AUTHORITIES

Cases:

Constitutional provisions:

Statutes:

Rules:

Other Authorities:

STATEMENT OF REPLY ARGUMENTS.....

Cases:

Statutes:

Rules:

Other Authorities:

Cases:

Statutes:

Cases:

Other Authorities:

IV. The trial court abused its discretion when it granted the Administrator's post-trial Motion to Amend to add a claim regarding the transfer of the farm from Glaser to Shreve and then from Shreve to Kindsfather when the Administrator had known about the claim for over a year before trial and had refused to amend its action prior to trial.....34

Cases:

Constitutional provisions:

Rules:

REPLY ARGUMENT

I. As a matter of law, the trial court could not set aside the recorded Warranty Deed from Shreve to Kindsfather [Exhibit 9] when the Shreve was not a party to the lawsuit.

The Appellees argue that Judy Shreve never had an interest in "the Jackson County Farm."['the farm"] (Appellees' Brief, pp. 23-27).

Judy Shreve's title to the one-half interest in the Jackson County farm was based upon a Warranty Deed from Glaser to her recorded on September 8, 2011 as Document No. 11-3494. (Exhibit 8)(App.pp.186-187).

A year later, on September 7, 2012, Judy Shreve conveyed her one-half interest in the farm deeded to her by Glaser to her daughter, Sherri Kindsfather. This Warranty Deed was recorded on September 19, 2012 as Document 12-3968.(Exhibit 9)(App.pp.188-190).

The Appellees disregard Shreve's legal contract, covenant and warranty of title conveyed to Kindsfather contained in Shreve's recorded Warranty Deed to Kindsfather for the farm that continue beyond her transfer of ownership and conveyance of title to Kindsfather. (Appellees' Brief, pp. 25-27).

There is no evidence in the trial record legally sufficient to contradict the written covenant of title contained in Shreve's Warranty Deed to

Kindsfather. Without evidence establishing ambiguity in the language of the Warranty Deed, the trial court could not go beyond the four corners of the Warranty Deed to interpret Shreve's intent regarding her warranties to Kindsfather. I.R.App.P. 6.904(3).

The evidence cited by the Appellees in their Brief does not prove any ambiguities in the language of Shreve's Warranty Deed to Kindsfather. (Appellees' Brief, pp. 26-27). Nor does the trial court in its Findings of Fact, Conclusions of Law and Ruling find any ambiguities in the language of Shreve's Warranty Deed to Kindsfather.(Ruling, pp. 14-15)(App.pp.64-65)

Shreve's Warranty Deed to Kindsfather states:

> "The Grantor hereby covenants with grantees, and successors in interest, that it holds the real estate by title in fee simple; that it has good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances, except as may be above stated, and it covenants to Warrant and Defend the real estate against the lawful claims of all persons, except as may be above stated." {Exhibit 9] (App.p. 189).

The Iowa Supreme Court has held that:

> Such a covenant of warranty, the principal covenant found in most deeds, 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. See generally 20 Am.Jur.2d, Covenants, Conditions and Restrictions Sections 43-53 (1965).

Kendall v. Lowther, 356 N.W. 2d 181, 189-90 (Iowa 1984).

The Iowa Court of Appeals has stated:

"The grantor of a general warranty deed promises to defend all claims. See Black's Law Dictionary 446 (8th ed. 2004)." *Lynch v. Lennon*, No. 9-739/08-1788 (Iowa App. 12/17/2009)(Iowa App., 2009), p.6.

The trial court ordered that: "2. The deeds to the properties described in Attachment/Appendix A to the Administrator's post-trial brief shall be and are set aside, declared void and held for naught." (Ruling p. 21)(App.p.71).

This order voided Glaser's Warranty Deed to Shreve [Exhibit 8].(App.p.186-187) This resulted in a breach in the covenant warranting the title that Shreve made in her Warranty Deed to Kindsfather filed September 19, 2012 as Document No. 12-3968. [Exhibit 9].(App.p. 188-190)

The warranty of title in Shreve's Warranty Deed to Kindsfather made Judy Shreve an indispensable party under I.R.Civ.P. 1.234(3) to any action involving title to the one-half interest in the farm because her warranty of title to the property was "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."

Based upon Kindsfather's Motion in Limine, the trial court should have ordered the Administrator to bring in Shreve as a party to the Administrator's the Motion to Set Aside Real Estate Transfers. (Motion in Limine, p. 2)(App. p.40).

Shreve did not become an indispensable party to this lawsuit until the trial court allowed the Administrator's post-trial Motion to Amend its pleadings to add the claim seeking the recovery of the farm from Kindsfather. (Transcript, Day 2, pp.113-114)(App.p.295-296).

The trial court stated on the record: "I do know that, with respect to the Jackson County farm, there is an additional quirk because there's an additional link in the chain. Mr. Glaser conveyed the Jackson County farm not to Ms. Kindsfather but to Shreve, and so there is that issue that I think complicates or makes that a slightly different issue." (Transcript, Vol. II, p. 114)(App.p.196).

The trial court avoided this issue when it found that this was a *sham* transaction 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).

The trial court erroneously 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 disregarded the facts that the Warranty Deed from Glaser to Shreve and the Warranty Deed from Shreve to Kindsfather had both been recorded at the Jackson County Recorder's Office. (Exhibits 8 and 9)(App.pp.186-187 and pp.188-190). Once these two Warranty Deeds were recorded, they became legally significant and part of the "chain of title" to this property. Recording these two Warranty Deeds gave Shreve the right and the obligation to defend her title to the farm against the Administrator's fraud claims.

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 conducted without him 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).

Based upon this case, Shreve, who was not a party to these proceedings contesting the title to the farm is not bound by these court's proceedings.

Judy Shreve was not named as a party in the Administrator's Motion to Set Aside Conveyances made by Glaser within three years of the date of his death. Therefore, the Warranty Deed to her from Glaser of his half-interest in the farm to Shreve was outside the scope of the original Motion to Set Aside Conveyances, which by necessity had to be limited to the only named respondent, Sherri Kindsfather. (Ruling, p. 13)(App.p.63).

Judy Shreve was never served a copy of the Administrator's Motion to Set Aside Conveyances and an Original Notice requiring her to appear and defend against the Administrator's claims seeking to set aside her Warranty Deed to Kindsfather.

Shreve was prejudiced by the trial court's post-trial ruling allowing the Administrator's Motion to Amend because she was not given the opportunity to defend the warranties in her Warranty Deed to Kindsfather. 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 her to Kindsfather.

The trial court treated the conveyances from Glaser to Shreve and from Shreve to Kindsfather as a *sham* when it stated:

> "[T]here is no evidence of an interest of Shreve in the property [the farm] at relevant times; nor that Shreve's absence will prevent the Court from rendering any judgment between the parties before it; nor that, in Shreve's absence, any party's interest would necessarily be inequitably be affected by a judgment rendered between those before the Court. Iowa R. Civ. P. 1.234. Moreover, all the parties – *Kindsfather, the decedent, and Shreve* – agreed that Shreve had held the farm for only 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. In short, the Court concludes Shreve was not and is not an indispensable party in connection with these matters." (Ruling, p. 15)(App.p. 65). [*italics added*].

The trial court's finding of an "agreement" between the parties had no factual basis in the record. The decedent did not testify in deposition or obviously at trial and *Shreve was not a party* to the lawsuit and was not deposed as a witness and did not appear at trial.

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 from Glaser to Shreve and the subsequent Warranty Deed from Shreve to Kindsfather

because both of these Warranty Deeds had been recorded and Shreve had a legal obligation under the deeds to defend the title she conveyed to Kindsfather.

Kindsfather pointed this issue out to the trial court in her pre-trial Motion in Limine filed April 5, 2018. (Motion in Limine, p. 2)(App.p. p. 40). Kindsfather requested that the trial court not allow evidence regarding the transfer of the farm because the claim had not been pled and not only added a new claim about a different property but required adding Shreve to the lawsuit as a defendant.

The trial court overruled the Motion in Limine because the case was being tried to the court and not a jury, but reserved all of Kindsfather's issues raised in the Motion in Limine to be raised at trial if any of the objectionable evidence was offered. (Final Pretrial Order filed April 10, 2018, p. 2, par. 4). The Appellees misstate the district court's April 10, 2018 ruling on the Motion in Limine. The district court did not determine that "evidence related to the Farm would be admissible, before trial began." (Appellees' Brief, p. 42).

The trial court did not find that Shreve was an indispensable party to this case because it could not add Shreve as a new party to the case. The

claim against Shreve on Glaser's Warranty Deed to Shreve of the farm was barred by the five year statute of limitations on September 9, 2016. (Ruling, p. 16)(App.p.66).

When the trial court applied the notice pleading rules and the relation back rule to the Warranty Deeds from Glaser to Shreve and from Shreve to Kindsfather, the trial court avoided the bar of the statute of limitations. (Ruling, pp. 16-17)(App.pp.66-67).

However, because Shreve was an indispensable party who had not been named as a defendant in the pleadings and had not been served a copy of the pleadings or the Original Notice in this action, *none of the liberties allowed to the Administrator under notice pleading rules and relation back rule apply to Shreve.* Consequently, the trial court incorrectly ruled that the statute of limitations did not apply to the Warranty Deed from Glaser to Shreve or the Warranty Deed from Shreve to Kindsfather. (Ruling, pp. 16 - 17)(App.p.66-67).

Failing to name Shreve as an indispensable party was also *prejudicial to Kindsfather's defense at trial.* Kindsfather could have obtained an appraisal of the value of the farm and called Shreve as a witness to testify

concerning her warranty of title which she owed to Kindsfather under the terms of her Warranty Deed to her.

The Administrator's failure to name Shreve as an indispensable party effected Kindsfather's decisions regarding how to defend against the Administrator's claims at trial and prejudiced the outcome of this case against Kindsfather.

For all the foregoing reasons, the trial court could not set aside the recorded Warranty Deed from Shreve to Kindsfather [Exhibit 9] when Shreve was not a party to the lawsuit.(App.pp. 188-190).

II. The trial court could not set aside the recorded Warranty Deed from Glaser to Shreve [Exhibit 8] as fraudulent when there was not clear and convincing evidence in the record that the transfer of the farm on September 9, 2011 resulted in Glaser becoming *insolvent* immediately as the result of said transfer.

The Appellees argued that Glaser was "generally not paying [his] debts as they [became] due" and that they had proved a presumption of insolvency under Iowa Code section 684.2. (Appellees' Brief,p. 43).

The Administrator's Exhibit "A" attached to its Appellees' Brief shows only one Iowa income tax lien filed against Glaser on September 9, 2011. (App.p 232). There was no evidence of any other debts owed by

Glaser in the trial record for September 9, 2011, the date of the transfer of the farm.

The trial court's concern about Glaser's alleged unpaid credit cards was misplaced. No credit card companies filed claims in Glaser's estate.

It was the Appellees' obligation to prove all the elements of a fraudulent transfer. However, there was not clear and convincing evidence in the record that the transfer of the farm on September 9, 2011 resulted in Glaser becoming immediately insolvent.

Actually, the facts in the record support a finding that the transfer of the farm did not result in Glaser becoming insolvent as defined by Iowa Code section 684.2

On September 9, 2011, Glaser owned significant assets in addition to the farm and that the transfer of the farm to Shreve did not cause Glaser to became insolvent. (Tr. Vol. II, p. 81 and p. 100) (App. p.283 and p.291)

These assets included:

1. Glaser had two pensions which were paying him at least $6,000 per month. (Tr. 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.p. 175-172) (Tr. Vol. II.

p. 100) (App. p.291). Kindsfather testified that the equity in the Glaser house as of December 28, 2012 was at least $37,000.00. (Tr. Vol.II, p. 80)(App.p.282)

3. On cross-examination by the assistant attorney general, Kindsfather testified that she believed Glaser had $75,000 to $100,000 of equity in 718 Swift Court. (Tr. Vol. II, p.100). (App. p.291)

4. Glaser also 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. (Exhibit A) (App.pp. 88-91). 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.p. 212-214 and pp. 215-218) (Exhibits A and B). (App. pp.88-91 and pp. 92-95) The Jackson County assessed value for just the house on January 1, 2018 was $233,200.00. (Exhibit A, p. 5). (App. p.91). The two lots were valued for assessment purposes at $26,100.00 for Lot 11 and $26,500.00 for Lot 13. (Exhibit B. p. 5)(App.p.95).

The Administrator did not dispute these assets. She 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. Vol. I, pp. 58 -60). (App. p.248-250)

On September 9, 2011, Glaser was current with his payment plan with the Iowa Department of Revenue for his back taxes. The only State of Iowa Income tax lien recorded against Glaser's properties on September 9, 2011 was the tax lien recorded January 7, 2008 with an original balance due of $25,891.39. (Appendix A)(App.p. 232)

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). (Tr. Vol.I, p. 30-31) (App. p.244-245).

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). (App. p.54).

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

Under Iowa law, *solvency was to be determined as of the date of the Warranty Deed* transferring the farm from Glaser to Shreve on executed on September 8, 2011 and recorded September 9, 2011, and not the date of Glaser's death on September 9, 2014. [Exhibit 8] See, *Grimes Sav. Bank v. McHarg*, 224 Iowa 644, 276 N.W. 781, 784 (Iowa 1937).

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).

If the evidence is not clear and convincing that the September 9, 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.

Without proof of Glaser's insolvency resulting from the transfer of the farm, the Administrator did not prove that the transfer of the farm was

fraudulent. Iowa Code Section 684.4(2)(i). Consequently, the trial court could not set aside the recorded Warranty Deed from Glaser to Shreve [Exhibit 8] as fraudulent.

There was no evidence in the record specifically proving Glaser's actual intent to defraud the State of Iowa when he transferred the farm to Shreve on September 9, 2011. Iowa Code Section 684.4(1)(a).

None of the criteria for determining actual fraud listed in Iowa Code section 684.4(2)(a) through (k) were proven by the Administrator.

There was no evidence that Glaser gave Shreve his interest in the farm when was engaged in a business or transaction which would leave his remaining assets unreasonable small in relationship to the business or transaction. Iowa Code Section 684.4(1)(b)(1). Glaser had recently inherited his interest in the farm. (Exhibit 12)(App.pp. 206-208) Glaser still had all the other assets he had accumulated on his own.

There was no evidence that Glaser gave Shreve his interest in the farm when Glaser intended to incur debts beyond his ability to pay when they became due. Iowa Code Section 684.4(1)(b)(2).

There was no evidence that either of the criteria set forth in Iowa Code sections 484.5(1) or (2) apply to the facts of this case. There was no

evidence that the transfer of the farm made Glaser insolvent or that Glaser was insolvent at the time of the transfer of the farm and Shreve knew about.

The trial court could not set aside the Warranty Deed to the farm without clear and convincing proof that the transfer of the farm resulted in Glaser becoming insolvent immediately thereafter.

III. The trial court could not set aside the transfers from Glaser to Shreve or from Glaser to Kindsfather without clear and convincing evidence that Shreve and Kindsfather each participated in a *conspiracy* with Glaser by knowingly *aiding and abetting* Glaser to prevent the Iowa Department of Revenue from attaching its liens against the properties Glazer transferred to them.

1. There was not clear and convincing proof that Shreve aided and abetted Glaser in a conspiracy to commit fraud on the State of Iowa when he transferred the farm to Shreve on September 9, 2011.

There was no evidence admitted at trial that when Shreve accepted the Warranty Deed, she 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 prevent the Iowa Department of Revenue on September 9, 2011 from attaching it's liens to the farm. 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 to recover the farm based upon Shreve allegedly knowingly aiding and abetting a conspiracy to defraud the Iowa Department of Revenue out of the value of the farm.

The Administrator sought to avoid adding Shreve as a named party to the case because any claim that Glaser had fraudulently conveyed title to her was barred by the statute of limitations five years after the Warranty Deed to her was recorded on September 9, 2011.

There was not clear and convincing evidence in the trial record that Shreve knowingly aided and abetted Glaser in a scheme to prevent the Iowa Department of Revenue from attaching its liens to the properties Glaser transferred to her. Without proof of Shreve's intentional involvement in a conspiracy, the trial court could not void the transfer of the farm to Shreve.

2. There was not clear and convincing proof that Kindsfather aided and abetted Glaser in a conspiracy to commit fraud on the Iowa Department of Revenue when he transferred the house and two lots to her on December 28, 2012.

The trial court had to find that Kindsfather's acceptance of the Quit Claim Deeds for the house and two lots was part of a conspiracy between her and Glaser to prevent the Iowa Department of Revenue from attaching

its liens on these properties before the trial court could void Kindsfather's title to her home and deny Kindsfather's and Randall's claim of a 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 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]. [*italics added*].

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

The Iowa Supreme Court has just stated:

> Generally, civil conspiracy requires an understanding between two or more parties to harm another; "[i]t involves some mutual mental action coupled with an intent to commit the act which results in injury." *Basic Chems., Inc. v. Benson*, 251 N.W. 2d 220, 233 (Iowa 1977). A person becomes liable for the harm caused by another's tortuous conduct when they commit, encourage, or assist such

> conduct. See *Ezzone v. Riccardi*, 525 N.W. 2d 388, 389 (Iowa 1994); see also *Restatement (Second) of Torts* section 876, at 315 (1979).
>
> Significantly, "[c]ivil conspiracy is not in itself actionable; rather it is the acts causing the injury undertaken in furtherance of the conspiracy which give rise to the action." *Basic Chems., Inc. v. Benson*, 251 N.W. 2d at 233. Accordingly a claim of civil conspiracy is "essentially [a] method[] for imposing joint and several liability on all actors who committed a tortuous act or any wrongful acts in furtherance thereof." *Salem Grain Co. v. Consol. Grain & Barge Co.*, 900 N.W. 2d 909, 924 (Neb. 2017)...

Jeffrey Anderson v. Anderson Tooling, Inc., et al, No. 15-1766 (filed May 31, 2019), p. 9, _____ N.W. 2d _____, _____ (Iowa 2019).

The trial court does not cite any specific evidence proving that Kindsfather *gave any encouragement or assistance to Glaser which was intentionally designed by Kindsfather to prevent the liens of the Iowa Department of Revenue from attaching to the house and two lots and which was the proximate cause of the Iowa Department of Revenue's liens not attaching to these properties*. (Ruling, p. 20)(App.p. 70).

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." (Ruling, p. 21). (App. p.71). *This finding does not rise to the level of finding a specific "agreement involving mutual mental action and intent to commit the act that results in injury.*

There is no evidence cited by the trial court that Kindsfather had the knowledge of either the facts or the law sufficient for her to be cognizant of Glaser's possible intentions when he transferred the house and two lots to her.

In fact, there is no evidence in the record that *at the time of the transfer* of the house and two lots at 612 Country Club Drive, Maquoketa, Iowa by three Quit Claim Deeds dated November 19, 2012, that Kindsfather either knew of Glaser's intention to prevent the Iowa Department of Revenue's liens from attaching to these properties or knowingly aided and abetted Glaser in any scheme to prevent these liens from attaching to the properties conveyed by Glaser to Kindsfather.

The trial court observed 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]. (Ruling, p. 9).(App.p. 59) (Tr.p. Vol. I. p. 84)(App. p. 253).

In March 2009, when Glaser allowed Kindsfather to move into his house, she was a young mother with a child who was entangled in an abusive relationship with her husband. (Tr. Vol. I. p.84 and p. 105) (App.

p.253 and p.259). She was unemployed and no place to live. (Tr. Vol. I, pp. 87-88). (App. pp.256-257),

Kindsfather testified that Glaser lived with her for two years from 2010 to 2011. (Tr. Vol. I, p. 100) (App. p.100).

Glaser had no children to benefit from his estate. (Probate Report and Inventory p. 1).

Kindsfather's understanding of Glaser's intentions involving his properties were that Glaser did not want his estate to go to his cousins. (Tr. Vol.II, p.85 and p.87)(App. p.284 and 285)

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. (See, pages 13-14 above).

Jason Randall testified that Kindsfather 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 house and two lots. (Tr. Vol. II, p.44, p.89, and p.104).(App. p.276, p.287, and p.293).

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, pp. 44 – 46 and p.78). (App. pp.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. Vol. II, pp. 44-46) (App. pp.276-278)

The trial court gave considerable 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. (Exhibit SS). (Ruling, pp. 18-19). (Tr. Vol. I, p. 60-61 and Tr. Vol. II, pp. 32-35).(App.pp. 250-251 and pp. 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.Vol. II, pp. 32-35). (App. pp.269-272)

The statements contained in Glaser's suicide note delivered to Kindsfather two and a half years after the transfers of the house and two lots to her cannot be considered as reliable evidence regarding *Kindsfather's intentions* in accepting the Quit Claim Deeds two and a half years earlier.

Furthermore, this rambling suicide note delivered September 9, 2014 does not shed any light on whether or not Glaser intended to defraud his existing creditors two years and a half years earlier on December 28, 2012, the day he recorded the three Quit Claim Deeds to Kindsfather or a year earlier on September 9, 2011 when he transferred the farm to Shreve.

Factual statements in this letter relied upon by the trial court about Glaser running up credit cards and not paying them are off are of questionable accuracy when no credit card companies filed claims in Glaser's probate estate. This misstatement of fact calls into question the credibility of the whole suicide note.

IV. The trial court abused its discretion when it granted the Administrator's post-trial Motion to Amend to add a claim regarding the transfer of the farm from Glaser to Shreve and then from Shreve to Kindsfather when the Administrator had known about the claim for over a year before trial and had refused to amend its action prior to trial.

I.R.Civ.P. 1.457 does not require the district court to grant a post-trial 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 170, 178-179 (Iowa 2017).

The trial court found that Kindsfather's deposition was taken more than a year before the trial. (Ruling p. 13)(App.p.63).

The trial court found that the Administrator had asked Kindsfather detailed questions about the transfer of the farm in Kindsfather's deposition taken March 30, 2017, over one year prior to trial. (Exhibit 21, pp 78-95). (Ruling p. 13)(App.p. 63)

The trial court concluded that: "based upon the detailed questioning of Kindsfather from page 78-95 in her deposition, Kindsfather was on notice of issues related to the farm conveyances." (Ruling p. 13)(App.p.63). The trial court concluded that Kindsfather was "on notice of issues related to the farm conveyances well in advance of trial, through …questioning in her deposition, giving Kindsfather fair notice of the claims related to the farm conveyances. See, *Young v. HealthPort Techs., Inc.*, 877 N.W. 2d 124, 127 (Iowa 2016)(Ruling p.13)(App.p.63).

The trial court's finding proves that the Administrator knew about the claim regarding the transfer of the farm for over a year before trial.

The legal system in Iowa is based upon pleadings conforming to I. R. Civ.Pro. 1.401 and 1.402.

"Due process implications loom when a court goes beyond the pleadings." *Matter of the Estate of Day*, 521 N.W. 2d 475, 478-479 (Iowa Ct.App. 1994).

The trial court's conclusion that questions directed to Kindsfather during the course of her deposition taken over a year before trial constituted the equivalent of legally prescribed notice served upon her of the Administrator's claim regarding the transfer of the farm is mistaken as a matter of law and violated Kindsfather's constitutional right to procedural due process of the law.

In *Hancock v. City Council of Davenport*, 392 N.W. 2d 472, 478-479 (Iowa 1986), the Iowa Supreme Court rejected the concept of "actual notice" being sufficient to serve as adequate "legal notice" under the constitutional right to procedural due process of the law.

Under procedural due process, Kindsfather was entitled to know prior to the hearing precisely what claims the Administrator was making and the evidence the Administrator intended to offer in support of said claims.

Generally speaking, the burden of pleading and proving an issue go together. The party who is required to plead an issue has the burden of proving that issue. *Lilly Funeral Home v. Iowa-Des Moines National Bank & Trust Co.*, 234 Iowa 950, 14N.W. 2d 633, 635 (Iowa 1944). It is *axiomatic* that the party with the burden of proof of an issue has the burden of pleading the issue.

The requirement of a hearing presupposes a meaningful opportunity to be heard. *In re Bishop*, 346 N.W. 2d 500, 507 (Iowa 1984).

The Administrator's failure to plead the claim regarding the farm after Kindsfather filed her Motion in Limine pointing out to the trial court that this issue had not been pled prior to trial stretches the Rules of Civil Procedure past their breaking point and crosses over into a procedural due process notice violation. See, 5th and 14th Amendments to the United States Constitution and Sections 9 and 18 of the Iowa Constitution.

The trial court abused its discretion when it granted the post-trial Motion to Amend to add a new issue that the Administrator had known about for over a year before trial, but had not pled in the record. This ruling denied Kindsfather her right to procedural due process of the law.

The Appellees argue that "the inquiry as to whether the district court had jurisdiction turns on whether Kindsfather had adequate notice that the district court would consider the conveyance related to the farm." (Appellees' Brief, p. 59).

Kindsfather's deposition was taken by the Administrator on March 30, 2017. This is the date that the Administrator claims that Kindsfather received "adequate notice" of the Administrator's claim to recover the farm.

On March 30, 2017, the date of Kindsfather's deposition, these were the facts regarding any claim to recover the farm from Kindsfather.

First, Judy Shreve, the first transferee of the farm and indispensable party, was not a party to the lawsuit.

Second, the Prayer for Relief in the Motion to Set Aside Transfers demanded that all real estate conveyed by Glaser during the three years prior to the date of his death on September 9, 2014 be recovered by the estate. Because Kindsfather was the only Respondent to the Administrator's Motion to Set Aside Transfers, on March 30, 2017 this Prayer for Relief had to be limited to real estate conveyed by Glaser only to Kindsfather. The Warranty Deed from Glaser to Shreve recorded September 9, 2011 for the farm was beyond the scope of the Administrator's Motion to Set Aside Transfers.

Third, on September 9, 2016, the statute of limitations had run on any action to recover the farm. So on the date of Kindsfather's deposition, the Administrator's claim was barred by the statute of limitations.

In reviewing these facts as they existed on March 30, 2017, the Administrator's claim was barred on that date so the questions in the deposition about a barred claim were legally insignificant and could not constitute notice of anything.

Kindsfather received no legal or actual notice of the Administrator's claim for the recovery of the farm at her deposition. The Administrator, claiming to know about this claim at Kindsfather's deposition hoists herself with her own petard because knowing about the claim for over a year before trial and doing nothing about it until after the trial was over is unacceptable pleading practice and the Motion to Amend should have been denied by the trial court under I.R.Civ.P. 1.457.

Dated: August 21, 2019

Respectfully submitted:

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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 6027 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' Reply Brief consisting of 42 pages was the sum of $0.00, exclusive of service, tax, postage and delivery charge.

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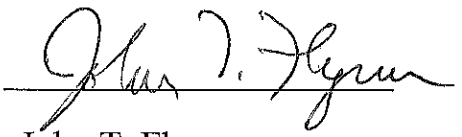

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Certificate of Filing and Service

I certify that on the 21 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.

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

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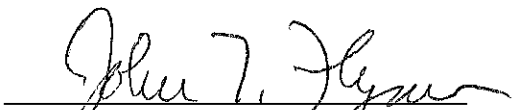

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