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.

APPEAL FROM THE DISTRICT COURT OF JACKSON COUNTY
THE HONORABLE SEAN McPARTLAND

Claimant-Appellant's Resistance to Plaintiff-Appellees' Application for Further Review

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Date of Filing of the Court of Appeals Opinion under review: July 22, 2020

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CLAIMANT-APPELLANT'S ARGUMENTS IN SUPPORT OF RESISTANCE TO PLAINTIFF-APPELLEES' APPLICATION FOR FURTHER REVIEW

I. The Court of Appeals erred when it failed to modify the trial court's order voiding all of Glaser's conveyances instead of ordering just enough relief to satisfy the DOR liens.

Grounds for Further Review:

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 232-233 (Iowa 1926), *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011), and Iowa Code sections 684.7, 684.8(2)(a) and section 633.368.

Argument:

A. The Iowa Court of Appeals erred when it failed to modify the trial court's order setting aside the transfers of the house and two lots when this relief exceeded the relief necessary to satisfy the DOR claims against the decedent for unpaid income taxes.

The trial judge *limited* the Administrator's recovery when the judge ruled on the record prior to the trial that *the issue for the trial was whether the DOR could obtain relief for the portion of its claim relating to income tax liens that had not been recorded prior to the decedent's transfer of real estate to Shreve and Kindsfather*. (Transcript, Vol. I, p.19).

The DOR had filed a Preferred Claim in Probate the Glaser Estate on June 28, 2016 for the sum of $106,897.83 for income taxes.

The Preferred Claim was never offered or admitted at trial as evidence of the decedent's indebtedness.

The parties stipulated for trial that the income taxes owed by the decedent secured by these two recorded income tax liens amounted to $40,278.28. (App.p. 54). This entire amount was a lien on the house and two lots in Maquoketa. Part of these taxes in the amount of $16,171.09 was also secured by Document No. 08-75 which attached a lien upon the Jackson County farm as well. (App. p. 54).

The evidence in the trial record shows that in 2019, the house and two lots were worth about $285,000.00. (App. p. 91) The current value of the one-half interest in the Jackson County farm is over $200,000.00. (Transcript, p. 174). Kindsfather's total properties are worth $485,000.00. Subtracting the amount of the DOR Preferred Claim of $106,897.83 left Kindsfather with an equity of about $378,000.00 - before the trial court voided the transfers to her.

When the trial court set aside all of these transfers, it granted the Administrator relief far in excess of the relief necessary to satisfy the DOR's secured claims.

The Court of Appeals' decision granting the Administrator too much relief conflicts with the *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 232-233 (Iowa 1926), *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011), and Iowa Code sections 684.7, 684.8(2)(a) and section 633.368.

The Court of Appeals decision should be modified to grant the DOR a judgment in rem against the house and two lots in the amount of $40,278.28.

II. The Court of Appeals erred when it failed to reverse the trial court's order voiding all of Glaser's conveyances because there is no proof in the trial record that there were any unsecured creditors of the decedent who were financially harmed by the transfers of Glaser's properties .

Grounds for Further Review:

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 232-233 (Iowa 1926), *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011), and Iowa Code sections 684.7, 684.8(2)(a) and section 633.368.

Argument:

A. There is no proof in the trial record regarding financial harm to any of Glaser's unsecured creditors.

The trial court stated:

> The Administrator contends the fraudulent conveyances have caused prejudice to the creditors of the Estate. *Kindsfather contends there is a lack of proof of prejudice.*
>
> The Court concludes it is clear that the defrauded creditors have been able to show they would have received something which has become lost by reason of the conveyances. *Prod. Credit Ass'n of Midlands v. Shirley,* supra, 485 N.W. 2d at 474.

(Findings of Fact, Conclusions of Law and Rulings October 31, 2018, Section D, pp. 20-21).(App. pp. 70-71).

However, the trial court's Findings of Fact, Conclusions of Law and Rulings filed October 31, 2018 contain no specific references to any specific unsecured creditors.

Furthermore, there is no evidence in the trial record supporting any claims by the DOR or the IRS for any unsecured income tax liens recorded after the transfers of real estate by the decedent.

B. The Administrator failed to plead or prove that the decedent had other unsecured creditors who were defrauded by the transfers of the farm and the house and two lots.

There were no unsecured creditor's claims pled by the Administrator as part of her Motion to Set Aside Conveyances. The Administrator should have notified Kindsfather in her pleadings who these other claimants may have been, the date of these claims, the nature of their claims, the monetary amount of these hypothetical claims, and whether the Administrator had admitted or denied these other claims. See, *Hancock v. City Council of Davenport*, 392 N.W. 2d 472, 478 (Iowa 1986).

The Court of Appeals only reference to other creditors of the estate was the statement: "Various creditors filed claims. One of those creditors was the Iowa Department of Revenue (DOR)." (Decision, p. 2).

The Court of Appeals made no findings about the identity of any other unsecured creditors of the decedent or the amounts of their purported claims against the decedent.

Under section 633.368, the funds recovered by the Administrator, over and above the proven secured claim of the DOR in the amount of

$40,278.28, can only be paid to unsecured creditors of the estate to the extent of their proven unsecured claims. Under the *Shaw v. Addison* case discussed below, none of these funds can be distributed to Glaser's heirs due to the Doctrine of Unclean Hands.

Without evidence of an unsecured tax lien in the trial record, the Court of Appeals had no authority to set aside the transfers of the farm and the house and two lots based solely on conjecture and speculation as to the amount of any unsecured liens filed by the DOR after the transfer of these of these properties.

Despite his earlier ruling what the issue was going to be for trial, the trial judge failed to make a finding of fact as to the amount of any unsecured income tax liens claimed by the DOR over and above the secured amount of $40,278.28.

The Administrator did not file a post-trial Rule 1.904(2) Motion requesting the trial court to correct the record and add a finding as to the balance of any unsecured income tax liens over and above the DOR's secured income tax liens.

Consequently, the Iowa Supreme Court must conclude that the trial court found against the DOR on this issue and determined that there was no

evidence in the trial record to support a factual finding regarding any claims by the DOR for any unsecured income taxes owed by the decedent over and above $40,278.28. [1]

C. The Court of Appeals erred when it did not find that property transferred by the decedent up to the amount of the DOR's secured lien in the amount of $40,278.28 was not fraudulently transferred.

The trial court and the Iowa Court of Appeals erred when they did not comply with Iowa Code chapter 684 and *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926) .

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

Iowa Code chapter 684 applies to this action brought by the Administrator on the DOR's behalf under Iowa Code section 633.368.

[1] The DOR should have independently pursued its administrative collection proceedings authorized under Iowa Code section 422.26(7)(b) to collect on its income tax liens recorded prior to the decedent's transfer of the real estate to Kindsfather.

Iowa Code section 684.1(2)(a) states that by definition, the term "asset" under the Uniform Fraudulent Transfer Act "does not include property to the extent it is encumbered by a valid lien". Section 684.1(2)(a).[2] Therefore, under Section 684.1(2)(a), the *transfer of property subject to a valid recorded tax lien is not, by definition, a transfer in defraud of creditors. .*

The DOR has a secured lien upon the farm for $16,171.09 and a secured lien against the house and two lots for $40,278.28. (App.p. 54).

The trial court erred when it based its order setting aside the Deeds from Kindsfather based solely upon the secured liens, because by definition there can be no fraudulent transfer of property securing a debt because the secured creditor can not be harmed financially by the transfer.

III. The Court of Appeals erred when it did not reverse the trial court's order setting aside the transfers of the house and two lots from Glaser to Kindsfather because this relief exceeds the relief necessary to satisfy the DOR liens. .

Grounds for Further Review:

[2] Under the definition of a "statutory lien" contained in Iowa Code section 684.1(8), the Iowa Department of Revenue had a "statutory lien" against the house and two lots under 422.26 which was a "valid lien" under section 684.1(12). Pursuant to section 422.26(3), the Iowa Department of Revenue liens were valid as to third parties under section 684.1(12) because they had been recorded.

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 232-233 (Iowa 1926), *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011), *Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 884 (Iowa 1996), and Iowa Code sections 633.368, 684.7, 684.7(1)(a), 684.8(2), and 684.8(2)(a).

Argument:

A. The Court of Appeals erred when it did not find that section 684.7 limits the Administrator's recovery under section 633.368.

The Court of Appeals erred when it failed to limit the relief granted by the trial court under section 633.368 to the relief allowed under section 684.4 and section 684.7(1)(a). (Decision, p. 13). See, Iowa Code section 4.7 and *State v. Perry*, 440 N.W.2d 389, 390 (Iowa 1989).

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

Iowa Code section 684.7(1)(a) provides relief to the DOR only to the extent necessary to satisfy the DOR's unsecured claims. See, Iowa Code section 684.8(2).

Under section 684.7(1)(a), once the DOR is made whole from the injuries suffered by the fraudulent transfer by Glaser, the title to the properties should remain in Kindsfather. See, *Schaefer v. Schaefer,* 795 N.W. 2d 494, 498 (Iowa 2011).

The Court of Appeals decision violates *Schaefer v. Schaefer* and Iowa Code section 684.7(1)(a) when it failed to reverse the district court's order to sell the house and the two vacant lots to satisfy hypothetical unsecured claims against the decedent.

In *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926), the Iowa Supreme Court reviewed an action to set aside a conveyance of certain real property upon the ground that such conveyance was in fraud of creditors, and was subject to the payment of the creditors' debts. *Id.*, p, 231.

> *The transfer was void only to the extent found by the court in favor of the [bankruptcy] trustee, and it was the duty of the court to establish the same as a lien against the property, and not to set aside the conveyance absolutely so as to vest title in the trustee.*

Crowley v. Brower, 201 Iowa at 262, 207 N.W. at p. 233.

B. The Court of Appeals erred when it did not reverse the trial court when it did not comply with Iowa Code section 633.368.

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

Iowa Code section 633.368 provides that 'the right to recover such property, *so far as necessary for the payment of the debts and charges against the estate of the decedent*, shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same." (Decision, p. 11).

The remainder of section 633.368 reads: "*Such property shall constitute general assets for the payment of all creditors.*"

The Court of Appeals erred when it concluded that section 684.7 only governs the remedies available to "a creditor," [but] not the administrator of an estate suing under section 633.368. (Decision, p.13).

The Administrator is suing as the *surrogate* of the creditor, the DOR. Consequently, the Administrator's recovery of property on behalf of the DOR is limited by section 684.7 to the DOR's claims proven at trial.

The Court of Appeals decision erroneously allows the Administrator to recover property fraudulently conveyed by the decedent with no restrictions on who can receive the benefit of the recovery over and above the amount of the DOR's claim. This decision is in direct violation of the *Shaw v. Addison* case discussed below *which specifically prohibits* Glaser's intestate heirs from benefitting from such a recovery.

IV. The Iowa Court of Appeals decision should be reversed because it did not rule that the Administrator was barred by the Doctrine of Unclean Hands from setting aside the Deeds to the farm and the house and two lots for the benefit of the decedent's intestate heirs.

Grounds for Further Review:

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Shaw v. Addison*, 239 Iowa 377, 28 N.W.2d 816, 827 (Iowa, 1947).

"The clean hands maxim need not be pleaded; the district court may apply the maxim on its own motion." *Opperman v. M. & I. DEHY, INC.*, 644 N.W.2d 1, 6 (Iowa, 2002).

Argument:

The Administrator is barred by the Doctrine of Unclean Hands from recovering real estate fraudulently transferred by the decedent to Shreve and

Kindsfather for *the benefit of his intestate heirs. Shaw v. Addison*, 239 Iowa at 398, 28 N.W.2d at 827.

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. (Decision p. 4, third paragraph from the top) (App. p.54).

As previously discussed on pages 2 and 3 above, the total value of the properties Kindsfather owned was worth approximately $485,000.00. This is the amount she will lose if the Supreme Court does not correct the trial court's Ruling and the Court of Appeals decision.

Under the Court of Appeals decision, after satisfying the proven liens of the DOR, there will be several hundred thousand dollars left over that will go to the decedent's heirs. This decision is *in direct conflict* with the ruling in the *Shaw v. Addison*, 239 Iowa 377, 398, 28 N.W.2d 816, 827 (Iowa, 1947) and Iowa Code section 633.368.

The Court of Appeals did not rule on the Unclean Hands Doctrine with regard to the transfer of the farm because it decided the issue of the farm transfer based upon the Statute of Limitations. (Decision, p. 10, ftnt. 3).

The Iowa Court of Appeals incorrectly ruled that the Doctrine of Unclean Hands in the *Shaw* case has been superseded by Iowa Code section 633.368. (Decision, pp. 10 – 12).

There is no conflict between the *Shaw* ruling and section 633.368. Under *Shaw* the heirs *cannot benefit* from the Administrator's recovery of fraudulently conveyed assets. Under section 633.368 only the "creditors" of the decedent *can benefit* from the Administrator's recovery of fraudulently conveyed assets. These results are not mutually exclusive and leave open the possibility that Kindsfather should retain ownership of the properties if she can pay off the DOR's liens.

The Court of Appeals decision should be modified to allow Kindsfather to retain ownership of the farm and the house and two lots with the house and two lots being subject to an in rem judgment on the real estate for the amount of the DOR's secured liens.

V. The Court of Appeals erred when it did not reverse the trial court's erroneous ruling that Judy Shreve was not an indispensable party to the Administrator's Motion to Set Aside the transfer of the farm to Shreve.

Grounds for Further Review:

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decisions in *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).

The defect of an indispensable party in an equitable action who is indispensable to the final adjudication of the rights of the parties is jurisdictional and *can be raised for the first time on an appeal*. See, *Tod v. Crisman*, 123 Iowa 693, 699, 99 N.W. 686, (Iowa 1904).

The Court of Appeals did not address this argument in its decision because it had previously ruled that the Administrator's claim to the farm was barred by the statute of limitations. (Decision, p.10, ftnt. 3).

Argument:

Judy Shreve ["Shreve"] did not become an indispensable party until after the conclusion of the trial when the Administrator made her oral post-trial Motion to Amend her pleadings to add a claim to the recover the farm for the estate.

Shreve was an indispensable party to the Administrator's action seeking to set aside the Warranty Deed [Exhibit 8] from Glaser transferring his interest in the Jackson County farm to Shreve

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."

Shreve's interest in the farm would be "necessarily … inequitably affected by a judgment rendered between those before the court." See, *Sear v. Clayton County Zoning Bd. of Adjustment*, 590 N.W. 2d 512, 517 (Iowa 1999) and *Wright v. Standard Oil Co.*, 234 Iowa 1241, 15 N.W. 275, 276 (Iowa, 1944)

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

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 ignored that *the Warranty Deed to Shreve had been recorded* at the Jackson County Recorder's Office. (Exhibit 8)(App.p.186-187). See, *Corbin v. McAllister (In re Brigham's Estate,* 144 Iowa 71, 81, 120 N.W. 1054, 1058 (Iowa 1909).

The Administrator should have amended 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).

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

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

Shreve was not given the opportunity to defend the warranties in her Warranty Deed to Kindsfather.

The trial court's action in setting aside the Warranty Deed to Shreve effectively voids her subsequent Warranty Deed to Kindsfather. (Exhibit 9). (App. pp.188-190).

VI. The Court of Appeals erred when it did not reverse the trial court's ruling granting the Administrator's post-trial motion to amend the pleadings to add the farm when the Administrator had knowledge regarding the transfer of the farm over a year before the trial.

Grounds for Further Review

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

Argument:

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

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

The trial court abused its discretion when it granted the post-trial Motion to Amend to add the issue regarding the transfer of the farm that the Administrator had known about for over a year before trial.

VII. The Court of Appeals' decision should be affirmed when it reversed the trial court and held that the Administrator's post-trial amendment to add the farm did not relate back to the original pleading because the transfer of the farm from Glaser to Shreve in 2011 did not arise out of the same *"conduct, transaction or occurrence"* as the transfer of the house and two lots in Maquoketa in 2012.

Grounds for Further Review

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

ARGUMENT

A. The Administrator's original Motion to Set Aside Transfers did not apprise Kindsfather of the "incident out of which the claim arose and the general nature of the action regarding the transfer of the farm".

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

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

The transfer of the Jackson County farm to Shreve on September 9, 2011 was clearly a *separate "incident"* from the transfers of the house and two lots on December 28, 2012 to Kindsfather. The two transactions lacked identities. The recipients of the deeds were different persons. The transactions were over a year apart. The legal descriptions describe two separate properties which were transferred. After identifying six different factors between the two transactions, the Court of Appeals stated: "So we cannot conclude the farm transfers were among the incidents described in the motion." (Decision, p. 7).

Notice pleading allows the Administrator to assert legal theories arising from the facts pled without specifically pleading the legal theory of recovery. See, *First Security Bank & Trust Company v. King*, No. 6-1013/05-2039(Iowa App. 1/31/2007) (Iowa App., 2007), p. 3.

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

Under the Administrator's Motion, Prayer for Relief, the trial court only had *jurisdiction of the case* to consider *the transfer of property to* ***Kindsfather*** within the three years prior to Glaser's death. (Administrator's Motion p.5, Prayer for Relief). (App. p.13). *The only properties that Glaser*

conveyed to Kindsfather in the three years before his death were the house and two adjacent lots in Maquoketa. [Exhibits N, O and 11]

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

The minimal requirements of due process require a service of a written pleading stating some facts directly relating to the alleged fraudulent transfer of the farm in order to give Kindsfather a meaningful opportunity to defend against this claim. See, *Hancock v. City Council of Davenport*, 392 N.W. 2d 472, 478 (Iowa 1986).

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

The Administrator's post-trial amendment to conform to the proof did not cure the fact that the amendment was filed after the statute of limitations expired on the deed to the farm from Glaser to Shreve. Because the Administrator's original pleading did not comply with notice pleading

standards, the Administrator's claim to recover the farm was beyond the scope of the pleadings and was barred by the Statute of Limitations.

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

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

C. The Court of Appeals' decision should be affirmed when it reversed the trial court's ruling and held that the Administrator's post-trial amendment did not relate back to the original pleading because the transfer of the farm from Glaser to Shreve in 2011 did not arise out of the same "conduct, transaction or occurrence" as the transfer of the house and two lots from Glaser to Kindsfather in Maquoketa in 2012.

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

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

being in the plural. Iowa Rules of Civil Procedure 1.402(5)]. (Ruling pp. 16-17). (App. p.66-67).

The cases cited by the Administrator on page 12 of the Administrator's Application for Further Review can be distinguished because they do not involve adding an indispensable party to the lawsuit such as Shreve.

The trial court did not allow Shreve to protect her rights to defend her Warranty Deed against the Administrator's claim. See, *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 491-492 (Iowa, 2000).

The Administrator's claim regarding Glaser's transfer of the farm to Shreve did not arise out of the same *singular* "incident" as the transfer by Glaser a year later of the house and two city lots to Kindsfather as set forth or attempted to set forth in the Administrator's original Motion to Set Aside Transfers. The transfer of the farm did not "arise out of the conduct, transaction or occurrence" as the transfer of the house and two city lots a year later to Kindsfather. Consequently, as determined by the Court of Appeals, the Administrator's Motion to Amend did not relate back to the filing of the original pleading and the claim regarding the transfer of the farm is barred by the statute of limitations. (Decision, pp. 8, 9 and 10).

VIII. The Court of Appeals erred when it did not reverse the trial court's err when it did not grant Kindsfather the right to redeem the properties from an "in rem" judgment in favor of the Estate.

Grounds for Further Review:

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

Argument:

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

A judgment in rem would have been sufficient relief under the "relief only to the extent necessary" standard to satisfy the unsecured income tax obligations of the decedent proven at trial.

The house and two lots are worth more than the total income taxes owed to the DOR as stipulated at trial and under the *Shaw* ruling and section 633.368, the titles to these properties should have remained with Kindsfather.

The trial court order setting aside the transfer of the house and two lots should have been reversed by the Iowa Court of Appeals and the Administrator's Motion should have been denied.

Because the two secured income tax liens in the amount of $40,278.28 were not a valid basis for setting aside the transfers to Kindsfather and because the Administrator's Motion to Set Aside the three Quitclaim Deeds should have been denied by the district court for failure of proof, the Iowa Court of Appeals failure to reverse the decision of the trial court regarding setting aside the transfers of the house and two lots must now be reversed by the Iowa Supreme Court.

Section 684.7(2) gives the trial court authority to allow Kindsfather the right to redeem from execution sale. The Iowa Court of Appeals erred when it did not reverse the district court and specifically grant Kindsfather the right to redeem from any judgment *in rem* based upon the evidence admitted at trial.

The Iowa Court of Appeals decision must be corrected and modified to allow Kindsfather to redeem her property received from the decedent from any judgment *in rem* the court imposes upon this property to satisfy any unsecured claims of the DOR proven in trial.

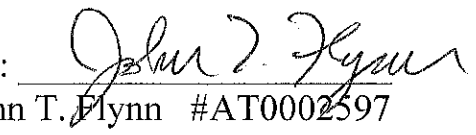
REQUESTED RELIEF

Kindsfather requests that the Supreme Court to grant the appropriate relief Kindsfather requested in her Application for Further Review and in this Resistence to the Administrator's Application for Further Review by denying the Administrator's Motion to Set Aside Transfers and reversing the decision of the Iowa Court of Appeals regarding voiding the transfers of the house and two lots to Kindsfather and allowing Kindsfather to retain title to the house and two lots and the farm and to redeem from any judgment in rem against her real estate for the secured liens of the DOR.

Dated: August 21, 2020.

Respectfully submitted:

Sherri M. Kindsfather

By: 

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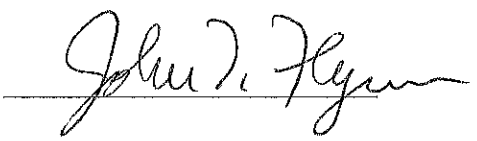
Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

I hereby certify that this Resistance to the Plaintiff -Appellee's Application for Further Review complies with the type-Volume limitation of I.R. App. P. 6.903(1)(g)(2) or (3) because this Brief contains 5,379 words, excluding the part of the Application for Further Review exempted by I.R. App. P. 6.903(1)(g)(1).

I further certify that this Application for Further Review 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 Application for Further Review has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

Date: August 21, 2020



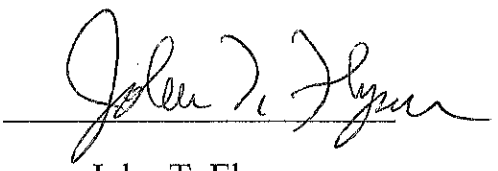
John T. Flynn

Attorney's Cost Certificate

I, John T. Flynn, hereby certify that the true and actual amount paid for the printing of the forgoing Claimant- Appellants' Application for

Further Review consisting of 39 pages was the sum of $0.00, exclusive of service, tax,postage and delivery charge.

Date: August 21, 2020



John T. Flynn

Certificate of Filing and Service

I certify that on the 21 day of August, 2020, the foregoing document was electronically filed with the Iowa Supreme Court Clerk of Court through the Iowa Judicial Branch Appellate Courts Electronic Filing System Notification and access to such filing shall be provided by the Electronic Filing System to all counsel of record who are members of the ECF system.

Proof of Service

I further certify that on the 21 day of August, 2020, I served one (1) copy of the foregoing Claimant-Appellants' Application for Further Review by depositing one copy in the U.S. Mail, with postage prepaid, addressed to:

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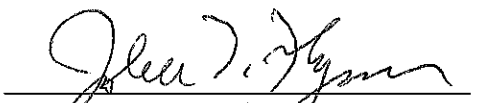

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