DRAKE LAW SCHOOL
REAL ESTATE TRANSACTIONS

April 5, 2024

REAL ESTATE CASE LAW & LEGISLATIVE UPDATE

David M. Erickson
Dentons Davis Brown, P.C.
215 - 10th Street, Suite 1300
Des Moines, Iowa 50309

Case Law

A. Aterra 144, 1960 Grand Avenue, WDM, LLC. v. David B. Anders

Iowa Court of Appeals No. 22-0774; filed February 22, 2023

David B. Anders was a member of an LLC known as Crazy Chicken, LLC, a Nebraska Limited Liability Company. Crazy Chicken entered into a lease agreement with the then owners of a shopping center in West Des Moines. The property was managed by John Mandelbaum and he negotiated the lease. Mr. Anders, who is one of the members of Crazy Chicken, signed the lease on behalf of the LLC. The initial term was for five years and gave Crazy Chicken the option to renew for up to two additional five-year terms so long as Crazy Chicken notified the landlord no later than six months prior to the expiration of the then current lease term, was not in default and had not been late on rent more than three times. Anders was the only member of Crazy Chicken asked to give a personal guaranty. His personal guaranty guaranteed the timely payment of rent and all other charges to be paid by Crazy Chicken under the lease and it also stated that the guaranty would remain in full force and effect as to any renewal or extension of the lease regardless of any modification or amendment of the lease.

Sometime in 2007 or 2009, Anders transferred his ownership interest in Crazy Chicken to the other members. In June 2010, the other members of Crazy Chicken notified Mandelbaum they wanted to renew the lease. There is a first addendum to the lease executed and as part of that addendum, the other three members of the LLC executed personal guarantees. In 2019, the owners of the shopping center sold the property to Plaintiff, Aterra. The purchase agreement specifically included any guarantees or warranties relating to the real estate or personal property.

In July 2020, Crazy Chicken and a manager for Aterra executed the fourth addendum to the lease agreement.

In August of 2020, Aterra advised Crazy Chicken that it was in default of the lease agreement for failure to pay rent and other charges required under the terms of the lease and for vacating and abandoning the premises in violation of the agreement. Aterra initiated this lawsuit a few months later. It brought the action against Crazy Chicken, the three parties who guaranteed the lease in 2010, as well as Anders.

Anders tried to argue that the previous owners of the shopping center, through Mandelbaum, abandoned his guaranty and accepted others in its place and that Aterra was barred from recovery under the doctrine of accord and satisfaction.

There was no actual written release of Anders from his personal guaranty. Aterra argued that Anders' personal guaranty stated that the guaranty remains in full force and effect as to any renewal or extension of the lease and regardless of any modification or amendment to the lease agreement.

Aterra moved for summary judgment which was denied as to the personal guaranty of Anders because of a fact question. Anders tried to argue that he had reached an agreement with Mandelbaum to have his personal guaranty released in 2010 in substitution for the three personal guarantees of the members of the LLC. Mandelbaum was not able to testify due to a memory issue but his assistant testified that it was unlikely Mandelbaum would ever release someone from a personal guaranty.

The Court in rendering its decision found that Anders' personal guaranty was still in effect and he was still liable for all amounts due under the lease as well as attorneys fees. The judgment was in the amount of $144,666.84 with attorney's fees in the amount of $108,169.80 and costs in the amount of $1,825.30. The issue of attorney's fees was addressed by the Court but prior to the judgment on the attorney's fees Andes appealed the decision finding he was liable under the personal guaranty. The Court of Appeals, in reviewing the decision, found that because the personal guaranty of Anders was a continuing guaranty rather than one that was specific to certain issues he was still liable under the guaranty. There was no evidence that the previous owner of the shopping center abandoned his guaranty even though there was testimony that Anders felt Mandelbaum had released him from the guaranty when he received the other guarantees. There was no actual written release document. The Court also reviewed Anders' accord and satisfaction argument. There was no evidence to show that Mandelbaum had taken a new personal guaranty in place of Anders' guaranty. Therefore, the Court affirmed the judgment rendered by a District Court finding that the personal guaranty of Anders was continuing in nature and he was personally liable. The issue of the attorney's fees was not proffered before the Court because Anders did not appeal the judgment on the attorney's fees.

B. Shri Lambodara, Inc. v. Parco, LTD.
Iowa Court of Appeals No. 22-0993. Filed May 10, 2023

Parco, Ltd. and Shri Lambodara, Inc. own properties in a shopping center. Lambodara owned Lot 3, which is a hotel, and which was adjacent to Lot 1 owned by Parco, which was a restaurant. The shopping center is divided into three lots. Parco occupies the southern portion of the property. Lot 2 is in the upper left-hand portion of the property and Lot 3 is in the upper right-hand corner of the parcel and owned by Lambodara.

A 1984 deed of dedication with eight covenants governs all business on the lots. The first three paragraphs of the deed (a through c) regulate use of the land in ways immaterial to this appeal, and the fourth paragraph d establishes a 21-year expiration for the three preceding paragraphs. Paragraph g which is the paragraph in question provides as follows: "For the mutual benefit of the undersigned, its successors and assigns in the ownership of the lot in said subdivision, the undersigned covenants that no barriers will ever be erected to prevent free and unlimited access for the owners and tenants and invitees on the lots in said subdivision between the driveways and parking areas on the lots in said subdivision, and this provision shall be a covenant running with the land as though incorporated in each and every deed and mortgage for all the lots in said

subdivision hereafter, and maybe be enforced by the owners or tenants of any lot in said subdivision."

Parco had owned a restaurant on Lot 1 since shortly after execution of the 1984 deed and Lambodara has owned a hotel on Lot 3 since December 2009. For a number of years the relationship between Lambodara and Parco was fine and there was free access between the parking areas of all three lots. Tensions then flared in 2015 when Parco started to build a curb on its property blocking vehicle access between Lot 1 and 3. There was also some damage to a concrete portion of Parco's lot and Parco accused Lambodara of causing the damage. In December of 2020, Parco directed snow to be piled near the boundary between Lots 1 and 3 obstructing access between the lots. Lambodara demanded Parco remove the snow according to the paragraph G easement. Parco's attorney responded and claimed that paragraph G was a negative easement that had expired. Lambodara's attorney filed this action for declaratory judgment requesting the District Court construe paragraph G as an easement requiring Parco to keep free and open access between the lots. Lambodara also requested a permanent injunction against Parco impeding access between Lots 1 and 3. Parco counterclaimed for trespass and for an injunction against Lambodara. Both parties sought full or partial summary judgment. The Court reserved ruling on summary judgment and heard evidence in a bench trial. After trial, the Court granted Lambodara's motion for summary judgment finding that the language of paragraph G created an easement rather than a use restriction and denied Parco's counterclaims.

The issue before the Court is whether paragraph G is an affirmative easement or a negative easement under Iowa's case law and subject to Iowa Code §614.24. The 2014 amendment to Iowa Code §614.24 is generally consistent with the Iowa Supreme Court's prior case law and it merely clarifies the original intent of the drafters of the Stale Uses and Reversions Act. The Court found that the language in this particular use restriction was an easement and was not subject to the Stale Uses and Reversions Act.

The Iowa Court of Appeals went on to determine that it was an affirmative easement rather than a negative easement and there was also language in the covenants which indicated that only the first three paragraphs of the covenants would be subject to the 21-year expiration time period. The Court of Appeals affirmed the District Court's finding that this language in the use restrictions was an affirmative easement which was not subject to the time limitation of Iowa Code §614.24 applicable to use restrictions.

C. Pistol Limited Company v. Green Family Flooring, Inc.
Iowa Court of Appeals No. 22-0126. Filed April 10, 2023

Pistol Limited Company owned a property at 1901-1903 Beaver Avenue in Des Moines, Iowa. Pistol operated the Chef's Kitchen in a portion of the building and leased a portion of the building at 1901 Beaver Avenue to Green Family Flooring, Inc. The lease provided for a five-year lease beginning on June 1, 2014 with an additional right to renew for an additional five years. The lease also contained the following provisions: "In the event of any offer to purchase the building in which the premises are located is acceptable

to [Pistol] at any time or times during the original or extended term hereof for the sale of the premises or for a lease to commence upon the expiration or earlier termination of the original or extended term hereof, [Pistol], prior to acceptance thereof, shall give [Green], with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser or tenant and [Green] shall have the option and right of first refusal for thirty (30) days after receipt of such notice within which to elect to purchase or lease the premises, as the case may be, on the same terms and conditions of said offer. If [Green] shall elect to purchase or lease the premises pursuant to the option and first refusal granted, it shall give notice of such election within such thirty (30) day period. [Green's] failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of [Green's] rights and obligations under this and any other paragraph herein."

In October of 2018, Green received a document titled "Declination to Exercise Right of First Refusal" from Pistol which stated Pistol had received an offer to purchase the building and Green declined to exercise the right of first refusal. Green did not sign the document. On November 12, 2018, Pistol executed a purchase agreement to sell the entire building at 1901 and 1903 Beaver Avenue for the sum of $300,000 and acknowledged that the Green Family Flooring leased a portion of the property from the landlord. There was a separate asset purchase agreement between the parent company, the restaurant and the purchaser of the property, Simon, who agreed to purchase the restaurant's assets for $235,000, plus $65,000 for inventory.

Green indicated to Pistol its intent to exercise the right of first refusal on December 7, 2018. It expressed an interest in purchasing the building for $300,000 with a closing date of January 21, 2019.

Pistol responded, "[T]he transaction involving the anticipated sale of the building at 1903 Beaver Avenue is part of a package deal involving the sale of the Chef's Kitchen restaurant business which operates at that location. The agreement to sell the building is specifically conditioned on the purchase of the business and the total consideration involved in that package deal is $700,000 with scheduled closing to take place on or about January 3, 2019."

Green did not enter into a package deal with Pistol and the closing of the sale to Simon occurred on January 4, 2019. On February 29, 2020, Pistol filed a declaratory action requesting a ruling that Green did not properly exercise its right of first refusal because it did not agree to purchase the property with the same terms and conditions as the sale to Simon.

The District Court found as follows: "The terms of the right of first refusal applied only to offers to purchase of the building. Here there was no offer for the purchase of the building alone. The Simon offer was a package offer. Simon would not buy, nor would the Littles sell, the building separate from the restaurant. Given the facts in this case, the attempt to sell the building in conjunction with the restaurant cannot be considered as an

indication that Pistol was interested in selling the building alone. The contractual right of first refusal is inapplicable by its own terms."

The District Court ruled in favor of the landlord. Green asserts that Pistol could not defeat its right of first refusal by creating a package deal where the property subject to the right of first refusal is only a portion of the property sold.

In general, a right of first refusal is valid and enforceable and cannot be waived by the party holding the right. The Court of Appeals concluded that the District Court erred by failing to follow Iowa legal precedence in its decision that the right of first refusal was inapplicable as Pistol wanted to sell the property as part of a package deal. Pistol had bargained away any right to force Green to buy either the restaurant business with the land or nothing at all. The Court therefore reversed the District Court's decision and remanded for determination of the proper remedy for Green.

D. No Boundary, LLC v. Brandi Smithson
Iowa Court of Appeals No. 22-0128. Filed April 26, 2023

On June 18, 2018, following a public tax sale, an entity named Wago 262 received a certificate of purchase for the property at issue – a condominium owned by Brandi Smithson. In April 2020, Smithson, as the "person in possession of the parcel" and "in whose name the parcel is taxed," was given a 90-day notice of the expiration of her right of redemption. On July 30, Wago 262 assigned its rights in the certificate of purchase to its affiliate business, No Boundary, LLC. Smithson did not redeem the property within 90 days after the notice of expiration. A tax sale deed was issued and in July of 2021, No Boundary served a notice to quit on Smithson, demanding that she vacate and surrender the premises within three days. She did not attend the hearing and a default judgment was entered and a writ of removal and possession was issued. On August 25, Smithson moved to set aside the judgment and requested the issuance of a stay or injunction. She argued her failure to appear to timely answer and defend is based upon a legal disability and because of that she demanded that she had the right to redeem. A hearing was held on December 14 at which a forensic psychologist testified on Smithson's behalf. The District Court found that Smithson's suffered from a legal disability, and this fact may avail herself of an additional period upon which to redeem as set forth in Iowa Code §447.7. The amendment to 447.7 took effect on July 1, 2018, which was shortly after the tax sale of Smithson's property. Prior to that enactment, there was another statute which stated that someone who is a minor or unsound mind would have an additional time to redeem. The Court went through the proper legal standard in determining whether Smithson was a person of unsound mind which would enable her to be able to redeem for a longer period of time which is a right to redeem within one year after the disability is removed . The issue before the Iowa Court of Appeals is whether Smithson established by clear, satisfactory, and convincing evidence that she was a person of unsound mind at the time her property was sold and deeded for nonpayment of taxes and therefore has an additional period of redemption. The Iowa Court of Appeals went through an analysis of what it means to be of unsound mind. They found that Ms. Smithson was able to pay her taxes on the property after she missed the one tax which led to the tax sale. The Court of

Appeals found that the District Court overlooked key evidence. The Court of Appeals found that while Smithson certainly struggled with her mental health, those struggles did not prevent her from managing her business. Smithson's payment of tax is clear evidence that she comprehended her duty to pay taxes and the consequences of failing to do so. Therefore, the Court found she was not entitled to redeem. The decision of the District Court was reversed and remanded with instructions.

E. Linda K. Juckette v. Iowa Utilities Board and MidAmerican Energy, et al.
Iowa Supreme Court No. 21-1788. Filed June 16, 2023

MidAmerican Energy Company petitioned the Iowa Utilities Board for a franchise to build electric transmission lines in Madison County. Some of the lines would run through a road right-of-way adjacent to Linda Juckette's land. Juckette protested. The IUB granted the franchise and on judicial review the District Court affirmed the IUB's decision.

On appeal, Juckette argues that MidAmerican did not satisfy the statutory requirement that the new electric transmission lines must be necessary for public use. She also argues that MidAmerican has no right to place electric utilities structures in the road right-of-way and at a minimum, if those structures are placed in the road right-of-way, such action is a taking of private property which requires compensation under the Fifth Amendment to the United States Constitution and Article I, Section 18 of the Iowa Constitution. The District Court ruled in favor of MidAmerican Energy and on appeal, the Iowa Supreme Court concluded that MidAmerican satisfied the statutory requirements for a franchise. The Court also concluded that Iowa Code §306.46(1) provides utilities like MidAmerican the statutory authority to construct, operate, repair, or maintain its utility facilities within a public road right-of-way including the road right-of-way that encumber Juckette's land. The constitutional issue regarding a taking that required just compensation resulted in the Court evenly divided and therefore the District Court's decision was affirmed by operation of law which found that no compensation was to be paid to Ms. Juckette.

In this case there was a road right-of-way that was established in 1979. A plat was dedicated which provided for a road right-of-way in the eastern edge of the property. There is no express statement as to whom the right-of-way was granted but it seems undisputed that the right-of-way was granted to Madison County and the road was a county highway. In a previous case by the Iowa Supreme Court, *Keokuk Junction Ry Co. v. IES Industries* the Court held that a public highway easement did not include the right of a utility to place its poles. In 2004 the legislature enacted Iowa Code §306.46 which stated that "a public utility may construct, operate, repair or maintain its utility facilities within a public road right-of-way."

In the IUB proceedings, MidAmerican Energy asked for a franchise to allow them to construct the poles across Juckette's right-of- area. Juckette opposed saying that this was not for a public purpose, or a public use and she also argued that MidAmerican could not rely on §306.46 to overcome the constitutional requirement of just compensation in

order to construct electronic transmission lines on her property. In a 2-1 decision the IUB granted MidAmerican's franchise. They did not, however, address the issue of any constitutional questions.

In Juckette's decision for judicial review the District Court affirmed the IUB's decision. The District Court agreed with the IUB's decision. The District Court rejected Juckette's constitutional arguments. The Iowa Supreme Court found that there was a public use in this instance because of the fact it would benefit current and future customers even though it was primarily to benefit Microsoft. The Iowa Supreme Court also argued that the amendment to Iowa Code §306.46 creates a statutory easement that allows utilities like MidAmerican to construct, operate, repair and maintain its utility facilities within a public road right-of-way. The only question was whether or not that construction could result in the taking that requires compensation under the Fifth Amendment to the United States Constitution and Article I, section 18 of the Iowa Constitution. The Supreme Court split on that issue so therefore the decision of the Iowa District Court was affirmed.

F. Pitz v. United States Cellular Operating Company of Dubuque Energy, et al.
Iowa Supreme Court No. 22-0038. Filed April 21, 2023

In 1988, when most cell phones were the size and shape of bricks and were stored in vehicle consoles, a cell phone service company had the foresight to enter into a thirty-year lease of property to build a cell tower. There was also a 30-year renewal option. When the lease came up for renewal in 2018, the rent was substantially below market and the cell phone company gave written notice of renewal to the property as specifically required by the option-exercise clause. However, the cell phone company did not immediately pay the renewal rent, even though the lease provided elsewhere that the renewal rent was "payable in a lump sum in advance at the exercise of the option." The property owners believed this action was not a proper exercise of the option and took the cell phone company to court in the declaratory judgment action. The District Court and the Court of Appeals ruled in favor of the cell phone company.

The Iowa Supreme Court concluded that the payment of the renewal rent was not a condition for exercise of the option and therefore the cell tower lease was properly renewed. Strictness and literalism in the law of offer and acceptance works both ways. The optionee must comply with all stated conditions for exercise of the option, but when those conditions have been expressly set forth in a separate provision, the list should normally be treated as exclusive. Therefore, the Court affirmed the District Court and the decision of the Court of Appeals. The lease in question contained two provisions. 3.2 provided as follows: "Option to Renew. Lessee shall have the option to renew this Lease Agreement for one (1) additional term of thirty (30) years, at the rental rate set forth in Article Four and upon all the other terms and conditions hereof. Lessee may exercise such option by giving written notice to Lessor at least sixty (60) days before the expiration of the initial term of this Lease Agreement." Provision 4.2 Option Term Rent provides as follows: "Lessee shall pay to Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum in advance at the exercise of the option, the amount of Twenty Thousand Dollars ($20,000.00), adjusted upward by the percentage of

increase in the Consumer Price Index ("CPI") from the Commencement Date to the first day of the last month of the current lease term. . . . If the amount of the CPI increase is not known at the time the option is exercised, Lessee shall pay Lessor ($20,000.00) at the time of exercise and the balance of the option term rent within thirty (30) days of Lessor's notice of calculation."

This property was transferred from the original owners of the property to their son and spouse William and Lynn Pitz. U.S. Cellular sent a certified letter to Robert and Dorothy on September 1, 2017 - over one year before the September 14, 2018, deadline for exercise of the option. This letter stated that it would "serve as notice that [U.S. Cellular] is exercising its option to renew the Lease Agreement dated November 14, 1988, for the first of one renewal term of thirty years." It was accompanied by an IRS Form W-9 and a direct deposit form, both of which U.S. Cellular asked to be completed and returned. William received those documents but did not return them timely. On October 29, U.S. Cellular forwarded a check for $31,494.02 to William and Lynn. As explained in the body of the letter, this amount represented the advance rent due based on the formula set forth in paragraph 4.2 of the lease, minus required income tax withholding.

William and Lynn believed that U.S. Cellular failed to properly exercise its option to renew due to the fact that it did not timely tender the rent payment before the opinion renewal date. This action was filed for declaratory judgment by the Pitzes. It was determined at a bench trial that the actual fair-market rental for the 30 years would be over $200,000.

The District Court ruled that U.S. Cellular had validly exercised the option. The Court determined that the payment of rent was not a condition precedent to the exercise of the option but instead was a term and condition under the renewed lease. Thus, any failure to meet obligations under the term of the renewed lease did not negate the exercise of the option or the existence of the new lease itself. The Iowa Court of Appeals affirmed that decision.

The Iowa Supreme Court went through an analysis of the two separate paragraphs in the lease agreement and looked at prior case law in Iowa. All the case law was dependent upon how the language of the option was written. The Court went through an analysis that acceptance and performance are two different things. Courts typically take a strict, compartmentalized view of acceptance and a broader, more holistic view of performance. The court indicated that is why offer and acceptance are often taught at the beginning of first-year contracts; the legal principals are more straightforward and therefore easier to learn. So, the principle that we read contracts as a whole has less relevance when the issue is whether an option was properly exercised. Here the Court found that the option was exercised relying on the case of *Welsh v. Jakstas*, 82 N.E.2d 53 (Ill. 1948). It held that the option was exercised properly as payment of the rent was a performance issue which did not affect the valid exercise of the option. The Iowa District Court as well as the Iowa Court of Appeals' decision was affirmed.

G. Scholtus v. Parkside Knolls-South Homeowners Association

Iowa Court of Appeals No. 22-0600. Filed April 26, 2023

This case concerns the authority of a homeowner's association to enact new restrictions on real property. The District Court found the restrictive covenants at issue were duly adopted by the Parkside Knolls-South Homeowners Association even though the HOA's governing documents did not express the authority to create restrictive covenants. Unless otherwise agreed to, all landowners must manifest assent to enter into a covenant restricting the use of their land. The Scholtuses did not assent to the covenants at issue. The Court of Appeals reversed the ruling of the District Court and remanded for entry of an order consistent with this opinion. Covenants were placed on the property in question in 1972. There were amendments in 1972 and 1978 and no subsequent claims were recorded within 21 years. The parties agreed that in 1999 the covenants expired pursuant to Iowa Code §614.24. The HOA remained in existence and continued to operate with respect to matters other than the restrictive covenants. In 2001 the Scholtuses purchased multiple lots within the subdivision including Outlot 3. In 2002, the HOA minutes indicated they would be working on a revision of the covenants. There was a meeting held on April 12, 2003, where seven members of the HOA were present and affirmed the new covenants on the property. The Scholtuses were not at the hearing and did not agree to the covenants. In 2020, Fowler Land, LLC entered into an agreement to purchase Outlot 3 from the Scholtuses. The agreement was reportedly continent upon the ability to use land for a purpose not in conformance with the 2003 covenants. Fowler and the Scholtuses filed a Petition for Declaratory Judgment seeking a determination that restrictive covenants adopted in 2003 were without legal force and effect. The District Court found the covenants were valid because they were adopted following the appropriate procedure in the HOA's bylaws. The Scholtuses and Flower then filed a timely appeal.

The issue before the Court was whether the covenants not agreed to by the owners of the property were, in fact, valid against the property. The Iowa Court of Appeals described how lot owners may come to promise land use restrictions to one another. "Covenants are agreements or promises. The agreements or promises here are to use real estate for certain purposes only. Such promises may be made in a variety of ways, as (a) by a single restricting instrument in which lot owners join, or (b) by a landowner's series of deeds containing restrictions on lots in a tract, or, as here, (c) by a landowner's restricting instrument on lots in a tract followed by deeds to those lots." Here, there is no evidence the Scholtuses made such a promise. The covenants had expired by the time they purchased the property. The amended consent filed in 2003 was not agreed to by the Scholtuses. The Iowa Court of Appeals found that because the Scholtuses did not consent to the 2003 covenants, they did not form a contract and the covenants had no legal force and effect against the Scholtuses. Therefore, the Court of Appeals reversed the District Court.

H. U.S. Bank National Association v. Cassady
Iowa Court of Appeals No. 22-1340. Filed April 26, 2023

A foreclosure proceeding was initiated in 2019 against the Estate of Valerie Cassady who had executed mortgages on her home in Warren County to Wilmington Trust, National Association and U.S. Bank. Wilmington Trust held the senior lien on the property and foreclosed naming the U.S. Bank as a junior lien as well as the Internal Revenue Service and the Villas at Orchard Hills. During the time of the foreclosure, Wilmington Trust assigned its note and mortgage to U.S. Bank who took over their first position on the property. The foreclosure sale netted proceeds above the amount that was due on the first lien. U.S. Bank then applied to condemn the foreclosure proceeds to pay off the senior and junior liens against the property. The Court granted the application for the senior interest, but the Court determined that the amount available to pay on the second lien to U.S. Bank was not for U.S. Bank as it had not properly foreclosed upon its junior lien interest. The Iowa Court of Appeals reversed the District Court and agreed with U.S. Bank's argument. Proceeds from the foreclosure sale go first to the senior lien. See Iowa Code §654.7. Any remaining surplus goes to the junior liens according to priority. Iowa Code §654.9. The junior lienholder does not have to foreclose on its lien to be entitled to any surplus.

I. U.S. Bank National Association as Successor by Merger of U.S. Bank National Association ND, Plaintiff v. Don W. Langmaid, Jr., et al.
Iowa Court of Appeals No. 23-0076. Filed December 26, 2023

This matter involves the foreclosure of property that was agricultural property. In a petition filed in 2019, U.S. Bank sought foreclosure of the Langmaid's real estate in Jasper County. The parties settled and the case was voluntarily dismissed by U.S. Bank. In June of 2022, a petition again was filed by U.S. Bank for foreclosure on the same property. The Langmaid's filed a pre-answer motion to dismiss claiming the property was agricultural property and therefore subject to pre-foreclosure farm mediation pursuant to Iowa Code §654A.6(a)(1)(2022). The District Court granted the Langmaid's motion to dismiss. The dismissal was with prejudice and U.S. Bank appeals the dismissal with prejudice.

Iowa Code §654A.6(a)(1) reads

> "A creditor . . . desiring to initiate a proceeding to enforce a debt against agricultural property which is real estate under chapter 654 . . . shall file a request for mediation with the farm mediation service."

Both parties agree the Bank did not comply with Iowa Code §564A.6(a) and therefore the Court could not proceed with the foreclosure. The only issue in this case is whether the District Court erred when it dismissed the petition with prejudice for lack of subject matter jurisdiction. The district relied upon Iowa Rule of Civil Procedure 1.943, titled "Voluntary Dismissal," which reads as follows:

> A party may, without order of Court, dismiss that party's own petition . . . at any time up until ten days before the trial is scheduled to begin. . . . A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any Court of any state or of the United States, including or based on the same cause, unless otherwise ordered by the Court, such dismissal shall operate as an adjudication against that party on the merits, in the interests of justice

The District Court found that because the previous dismissal had been entered that this dismissal under Iowa Rule of Civil Procedure 1.943 had to be with prejudice. The Court also went on to find before they dismissed the matter that the property was protected as a homestead. The plaintiff did not have a signed homestead exemption in its mortgage; therefore, the matter should be dismissed with prejudice. The Iowa Court of Appeals determined that the District Court acted beyond its power in making the second part of the ruling regarding the homestead exemption waiver. After finding it lacked subject matter jurisdiction, the District Court impermissibly made findings of fact and conclusions of law on merits of the case.

The Iowa Court of Appeals found that the District Court's application of Rule 1.943 was incorrect. Since the District Court dismissed the U.S. Bank's petition and not U.S. Bank it could not be considered a voluntary dismissal as contemplated by Rule 1.943. Therefore, the proper analysis is under Iowa Rule of Civil Procedure 1.946, "All dismissals not governed by Rule 1.943 or *not for want of jurisdiction* or improper venue, shall operate as adjudications on the merits unless they specify otherwise." The Court found it was plain language of the rule that dismissals for lack of subject matter jurisdiction are to be without prejudice, as lack of jurisdiction is one of only two exceptions to a dismissal constituting a judgment on the merits.

The Langmaids tried to argue that *AAC Holdings LLC v. Rooney,* 973 N.W.2d 851, (Iowa 2022) was the controlling case; however, that case deals with voluntary dismissals and not a voluntary dismissal and an involuntary dismissal. Therefore, the District Court Court's decision was reversed and remanded for entry of a dismissal without prejudice.

J. PennyMac Loan Services, LLC v. Pheasant Trail Seventh Owners Association, Inc.

Iowa Court of Appeals No. 23-0017. Filed January 24, 2024

Gregory Williams was an owner of a condominium unit in the complex. Pheasant Trail Seventh Owners Association, Inc. was the association for the complex. On March 1, 2019, Williams executed and delivered a promissory note and purchase money mortgage on the unit in question to Mortgage Electronic Registration Systems (MERS) as nominee for Veridian Credit Union. MERS assigned the note and mortgage to PennyMac on April 1, 2020. On July 6, 2021, PennyMac elected, in accordance with the terms and conditions of the note and mortgage, to declare the whole amount of the note due and payable and exercise the right to enforce payment and foreclose the mortgage by filing a

petition of foreclosure. The Association was not a party to the foreclosure. On October 6, 2021, the District Court entered judgment in favor of PennyMac and ordered the real estate be foreclosed with PennyMac as the valid owner and holding a paramount lien.

On February 13, 2022, the Association attempted to assess PennyMac a "foreclosure fee" of $3,500 and demanded attorney fees in the amount of $3,000.

On June 3, 2022, PennyMac became the titleholder of the real estate by virtue of a sheriff's deed from the Sheriff of Linn County, Iowa. PennyMac and the Association attempted to mediate the issue involving "foreclosure fees" and attorney fees but were unsuccessful and on September 6, 2022, PennyMac filed a petition seeking a declaratory judgment pursuant to Iowa Code of Civil Procedure 1.1101 with respect to whether the Association's governing documents provided the authority to impose a "foreclosure fee" or collect attorney fees from PennyMac.

Both parties filed a summary judgment with the Association acknowledging "the governing documents admittedly do not refer to 'admission or transfer fees'" but arguing that its powers include those articulated in the governing documents and, by the very terms of the governing documents, those powers further included those articulated in the statute and in particular Iowa Code §504.302(14). This code section grants the corporation the authority "to do all things necessary or convenient to carry out its affairs" including "imposing dues, assessments, and admission and transfer fees upon its members." The Association tried to argue in respect to the attorney fees that Article X, Section 11 of their Condominium Declaration states, "if the Association successfully brings an action to … otherwise enforce the terms of this Declaration, the Association may collect reasonable attorney fees." The Association also relied upon Article VII, Section 9 which states when the Association sues an owner to foreclose upon its lien they are entitled to attorney's fees.

PennyMac argued that the rights granted in sections 504 and 504A do not give the Association the right to impose a foreclosure fee and attorneys fees against PennyMac. The District Court granted PennyMac's motion to deny the Association's request finding there was no language in the governing documents that allowed for the Association to impose a foreclosure fee, transfer fee or attorneys' fees incident to a third-party foreclosure.

The District Court also found that there was nothing in the Bylaws or the Articles of Incorporation of the Association which allows them to impose a foreclosure fee or attorneys fees against an entity that acquires title through a foreclosure. The Court therefore affirmed the District Court in finding that PennyMac was not liable for any type of foreclosure fee and/or attorneys fees.

K. David A. Muhr and Christine L. Mickel v. Rachelle E. Willenborg
Iowa Court of Appeals No. 22-1780. Filed January 24, 2024

This case deals with a partition of farmland. The farmland is considered heirs property under Iowa Code §651. This case provides an excellent explanation regarding

the history of the partition action in Iowa and the current status of partitions in Iowa. The plaintiffs and the defendants inherited their mother's property approximately 20 years ago along with two other siblings who are no longer involved in the ownership of the property. The property is approximately 273 acres of Carroll County farmland. They owned the property as tenants in common. The three parties discussed how to divide the property. No agreement was reached by the parties as to a amicable division. Based upon the lack of consensus, Muhr and Mickel petitioned the District Court to partition the farmland by sale in November of 2021. Willenborg answered the petition asking the Court to partition the land in kind. Both parties agree the land was heirs' property subject to subchapter III of Iowa Code §651. Neither party requested the opportunity to make a co-tenant buyout. The District Court appointed a referee to evaluate the farmland. The referee determined that there was no way to divide the property into three parcels because of two ditches on the property. The referee suggested dividing the property into two parcels – a north and south parcel – and having Willenborg take title to the south parcel and then make an owetly payment of $25,600 each to Muhr and Mickel. The north parcel then would be ordered to be sold by sale as requested by Muhr and Mickel. This resolution was a hybrid partition. Muhr and Mickel disagreed with the Court's interpretation and appealed to the Iowa Court of Appeals stating that a hybrid partition is not allowed under the Iowa Code §651.

The Iowa Court of Appeals went through an analysis of the history of partition law in Iowa. Initially there was a preference for partition in kind in Iowa but in 1943 the Iowa Rules of Civil Procedure were changed and there was a preference for a partition by sale. Then in 2018 when the General Assembly enacted partition legislation now codified at Iowa Code §651 there was a presumption for partition in kind if the property is an heir's property. The co-tenants who desire partition in kind have forty-five days to "buy out" the property interest of their adverse interests. If no buyout, the court must partition in kind unless doing so would result in great prejudice to the co-tenants as a group. They argued that if you cannot partition in kind then partition by sale is the only option. There is no hybrid partition.

The Iowa Court of Appeals went through an analysis of the history of partitions in Iowa and determined that a partition that is hybrid in nature can be allowed on heir's property because it was never disallowed by the Iowa legislature. The legislation from 2018 was intended to protect family farms from forced traditional sale and a hybrid type of partition accomplished the goal. The Court went through an analysis of the great prejudice inquiry and determined there was great prejudice in this case if the property had to be sold and therefore a partition in kind for the whole parcel would not be feasible. A hybrid partition where Willenborg got a portion of the property in kind and the remainder was sold by partition by sale was equitable and practicable and allowed by the statute. The decision of the District Court was affirmed.

L. Witting v. Schinstock-McConnell

Iowa Court of Appeals No. 22-1301. Filed August 9, 2023

This case deals with a boundary by acquiescence. Witting owned a property that was a farm and included a house lot that was enclosed by a fence. The Wittings bought the farm in 1959 and in 1976 they separated the house lot from the farm, with the intent of selling the house lot, and moving to West Pointe, Iowa. They developed a legal description for the lot. There was a fence that divided the lot from the farm. After several years the fence on the eastern portion of the lot was no longer in existence. However, the fence post was still visible on the property. The individuals who owned the house lot, had a survey completed. The survey showed the existing lot line to be 35 feet west of where the previous fence was located. This action was brought by the Wittings seeking to establish the true boundary of the house lot where the previous fence line was located. The District Court as well as the Iowa Court of Appeals reviewed the legal theories behind boundary by acquiescence. A claim of boundary by acquiescence requires that both parties and their predecessors "acknowledge and treat the line as a boundary" and "the acquiescence persists for ten years." There is no question in this case that from 1976 to 1986 the boundary was where the fence line was located. It was visible, known and definite and the owners of both properties treated the fence as the eastern boundary of the house lot for at least ten years. Even though the fence was where the boundary was for ten years, there still must be a definitive line currently existing to succeed on a boundary by acquiescence claim. The Court relied upon the fact that there was still a fence post that existed and they determined that the Wittings' boundary along the fence line was a true boundary and ruled in favor of the Wittings. The Iowa Court of Appeals agreed, finding there was substantial evidence supporting the District Court's finding of a boundary by acquiescence. The Court of Appeals is bound by the facts found by the District Court in reaching that conclusion.

M. Amy Eileen Guiter v. Diane Lee Meinecke, Personally and as Executor of the Estate of Hal Dean Meinecke

Iowa Court of Appeals No. 23-0773. Filed November 21, 2023

George Meinecke, Jr. died testate on July 8, 2003. In his will, he left his wife, Roberta Meinecke, a life estate in his farm real estate with a remainder interest to their children, per stirpes. Article IV of the will provided that "the farm was given to the wife to hold for her life, and upon her death, to my descendants who survive me, per stirpes, together with the power to sell, at public or private sale, mortgage or in any other manner dispose of such property during her life for the purpose of acquiring money for her health, support and maintenance." It went on to say his wife may exercise the power of sale given to her under this Article without court order or the consent of any person having a remainder interest in the property. Roberta survived her husband and took ownership of the property shortly after his death. Roberta in 2021 conveyed her life estate interest in the farm to a trust and the trust then sold the property to John Dawley. The Plaintiff in this action, Ms. Guiter, was the child of one of the heirs of George Meinecke. She argued that there was nothing in the sale which indicated that the transfer was made for the purposes of supporting the health or maintenance of Roberta Meinecke. The District

Court found that Roberta had the unrestricted right to sell the farm and that Article IV of the will unambiguously does not require evidence that the property was being sold for the health and maintenance of Roberta as a condition of exercising the power to sell and conveying clear title to a third party. The language regarding whether the property was sold for the health and maintenance of Roberta was not for the purposes of benefiting the remaindermen but any purchaser of the property could ask for that certification. The District Court's decision in favor of the sale was affirmed by the Iowa Court of Appeals.

N. Concerned Citizens for Grand Avenue Development v. City of West Des Moines, et al.

Iowa Court of Appeals No. 22-1342. Filed July 13, 2023

Concerned Citizens for Grand Avenue Development were opposed to the placing of a golf entertainment facility in West Des Moines. In order for the golf entertainment facility to be constructed, there had to be an amendment to the City of West Des Moines comprehensive plan and a corresponding plan unit development or PUD. This group challenged the City on how they processed the amendments to the comprehensive plan including the fact that they did not hold a development review team meeting and by not considering "smart planning principles" as required by Iowa Code chapters 18B and 414. This group filed an action for mandamus and writ of certiorari. The only issue before the Court is whether or not an act of mandamus is appropriate in this type of action. The Iowa Court of Appeals determined that mandamus is a special action enforced by an extraordinary writ pursuant to Iowa Code §661. The actions' purpose is "to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station." Mandamus is not available to establish legal rights but only to enforce legal rights that are clear and certain. However, "mandamus shall not be issued in any case whether there is a plain, speedy and adequate remedy in the ordinary course of the law, save as herein provided." The issue before the District Court as well as the Iowa Court of Appeals, is whether or not mandamus is appropriate in this action. The Court relied upon several Supreme Court decisions which indicate that certiorari is the exclusive remedy to review "decisions of city councils or county boards of supervisors acting in a quasi-judicial capacity when the claimant alleges illegality of the action taken." The Court determined that the zoning action was quasi-judicial and was subject to a certiorari action rather than mandamus. The Iowa Court of Appeals affirmed the dismissal of the petition requesting a writ of mandamus.

O. Gent v. Gent

Iowa Court of Appeals No. 22-1065. Filed October 25, 2023

Thomas Gent was the son of Shirley and Dennis Gent. He purchased a portion of their farm on contract and as part of that contract purchase, he had an option to purchase an additional 70 acres from Dennis and Shirley. The option provided that the amount of the purchase price would be $1,800 an acre and described the legal description of the property. Dennis and Shirely, in 2014, entered a long-term farm lease with Thomas' other brother John, and his wife, Beth. That long-term lease was for 20 years. Thomas got a

divorce from his wife and as part of the divorce settlement he was required to "exercise their option rights to purchase the 70-acre tract." Thomas paid his parents the sum of $126,000 for the 70 acres of farmland and they conveyed the property by a special warranty deed. The special warranty deed contained a provision that it was subject to the 20-year farm lease with his brother John and provided for the recording information regarding that lease. After the deed was executed and recorded, Thomas brought this action against his parents alleging they breached the option of purchase in the real estate contract by failing to convey title to the 70 acres free and clear of encumbrances and because of the impact of the farm lease, his parents were unjustly enriched. The District Court found that the special warranty deed merged the option contract into the deed. There was no ability to collect under an unjust enrichment theory because there was a written contract not an implied contract. An implied contract is required for unjust enrichment. The Court of Appeals went through an analysis of the merger doctrine and noted, in general, absent any showing to the contrary, the contract of conveyance is deemed to have merged into the subsequent deed. There are some exceptions, but the court found that there were no exceptions in this particular case that would prevent the contract from merging into the deed. The Court of Appeals also found that there was no unjust enrichment because there was an actual written contract, no implied contract, and unjust enrichment can only be found to be a valid legal theory if there was an implied contract. The decision of the District Court was affirmed.

P. Binneboese v. Binneboese

Iowa Court of Appeals No. 23-0260. Filed January 10, 2024

James Binneboese farmed the family farm of nearly 400 areas in Plymouth County for his parents, Eugene and Mildred Binneboese. Eugene and Mildred Binneboese provided in their wills that the real estate would pass to their six children. There was an option to purchase granted to James to purchase the farmland at fair-market value. This property option to purchase had to be exercised within five years after the death of his parents, whoever was the last to die. In July of 2020, James exercised his option to purchase but the parties were not able to agree upon a fair-market value for the property. The issue before the Court of Appeals was when was the fair-market value to be determined. The District Court applied the doctrine of equitable conversion to provide that when James exercised his option in 2020, the property essentially became his under the equitable conversion doctrine. That date was the date to determine the market value of the property. The Court eventually determined the market value and found that the market value would be on the date that he exercised the option rather than a later date. The decision of the District Court was affirmed.

Q. Wallin v. Hurtig, et al.

Iowa Court of Appeals No. 23-0267. Filed October 11, 2023

A property in O'Brien County consisting of approximately 316.59 acres with 272.8 being tillable was owned as follows: Jane Bjork owned a sixty-percent interest in the property in fee simple and a life estate in forty percent of the property with the remainder in her four living children who were Susan Wallin, Kimberly Hurtig, Sherri

Larkin and Kathy Edwards. On January 23, 2015, Bjork entered into a 15-year cash rent farm lease with Jeff Hurtig, Inc. Jeff Hurtig, Inc. was owned by the husband of Kim Hurtig.

Bjork passed away on January 7, 2021, and her estate went into probate administration. When Bjork died, the siblings became owners as tenants in common in an undivided forty-percent interest in the property because of the remainder interest and the remaining sixty percent because of the death of Ms. Bjork who left the entire estate to her children.

Prior to September 1, 2021, Wallin, individually and a co-executor of the estate of Ms. Bjork, sent a notice of termination of the farm lease to Jeff Hertig, Inc. The other co-executors as well as the other owners of the forty-percent interest in the property dispute the validity of the notice of termination.

Wallin then filed this action for a declaratory judgment seeking an order and judgment declaring the farm lease unenforceable, invalid or terminated with respect to 100 percent of the real estate as of March 1, 2022.

Wallin states the question presented is the enforceability of the farm lease respectively following Wallin's termination notice.

Wallin argues that the siblings are owners as tenants in common in the real estate on the date of Bjork's death. Thus, it is Wallin's position that this termination notice terminated the farm lease with respect to 100 percent of the real estate.

The District Court concluded that where a valid lease existed and fewer than all tenants in common wanted to terminate the lease, Iowa's precedent holds the individual co-tenant cannot do so. The District Court held that because the other tenants in common did not agree with the notice of termination of the farm lease, that the notice was not a valid termination notice.

On appeal, Wallin argued that if the lease is allowed to continue, then it would be a restraint on alienation. The Iowa Court of Appeals held leases are not restraints on alienation and that all the co-tenants must agree to terminate the lease to have a valid termination notice. The Court held as far as the remainder interest of the vested forty percent of the farm the statute requires that all of the co-tenants agree to the termination notice and as to the remaining sixty percent interest, all of the co-executors must agree to the termination of the lease.

The Court of Appeals affirmed the District Court finding that because not all of the tenants in common agree to the termination notice being sent to the tenant, the notice was invalid.

R. Conservatorship of Janice Geerdes by Laura Jenkins, Conservator v. Albert Gomez Cruz

Iowa Court of Appeals No. 22-1905. Filed December 6, 2023

This case deals with the invalidation of the quit claim deed because of undue influence and lack of mental capacity. Janice Geerdes was a 79-year-old widow who owned a farm in Kossuth County, Iowa. She had developed a business relationship with a gentleman named Albert Cruz. He would help her with her farming operation as well as with her personal matters after her husband died in 1999. A part of the farmland was set apart to develop a hog operation. The hog operation was called Blue Acres Pork and was operated by both Ms. Geerdes as well as Mr. Cruz. It was a 9.64-acre parcel. As part of the arrangement, in September of 2004, Geerdes executed a warranty deed conveying a one-half interest in the 9.64 acres parcel to Mr. Cruz. This first deed is not challenged by any party to this case. Over the years, Ms. Geerdes developed some cognitive issues and in April of 2017, had a cognitive assessment. The therapist who completed the cognitive assessment concluded Ms. Geerdes had underlying dementia and needed frequent support and assistance with daily life. Later that same year in 2017, Geerdes was injured in a vehicle accident which affected her mental capabilities. Family members, as well as neighbors and other people who encountered Ms. Geerdes felt that she was never the same after this automobile accident. In January of 2019, Geerdes transferred the other one-half interest in the 9.64-acre property to Cruz. This transfer was done by a quit claim deed. When she had the deed executed and transferred to Cruz, she talked to an attorney, but the attorney was not one she worked with on a regular basis. In May of 2020 after Geerdes had a conservator and guardian appointed, a Ms. Jenkins, who is her daughter, brought this action to set aside the quit claim deed. After a bench trial two years later, the district found that Geerdes lacked mental capacity to execute the deed and Cruz executed undue influence over Geerdes. The Court set aside the deed that was executed in 2019.

The Iowa Court of Appeals indicated that to set aside a deed because of lack of mental capacity the conservator "had the burden to show by clear, satisfactory and convincing evidence that at the time [Geerdes] made the deed she was incapable of understanding in any reasonable manner the nature of the transaction and it's consequences and effects upon her rights and interests."

At the District Court level there was no expert testimony provided regarding Ms. Geerdes' mental capability, but the Court relied upon testimony from neighbors and family regarding Geerdes' cognitive abilities at the time she executed deed in 2019. The Court also looked at the influence that Mr. Cruz had upon Ms. Geerdes and whether that was to be considered an undue influence that made Ms. Geerdes sign the deed .

The Iowa Court of Appeals affirmed the District Court stating that "considering the heightened mental capacity required for an inter vivos transfer and the record as a whole – especially Geerdes' mental state in the months before and after signing the deed, the Court of Appeals agrees the conservator caried her burden to prove Geerdes did not understand the effect of the deed when she signed them."

There was a strong dissent by Judge Buller who indicated that there were no experts who testified at the District Court level regarding her mental capabilities. The burden of proof was clear and convincing evidence. The conservator did not meet this burden of proof. Judge Buller stated that the main reason the District Court set aside the deed was the undue influence by Mr. Cruz on Ms. Geerdes.

S. Estate of Sena J. Wiebke, by Monte Keller, Special Executor v. Keith Wiebke
Iowa Court of Appeals No. 23-0186. Filed January 24, 2024

Sena Wiebke owned a home as well as roughly 95 acres of farmland in the county of Butler. Wiebke had two children, Keith and Joan. In 2010, Wiebke executed a general power of attorney, naming Keith as her attorney-in-fact. This power of attorney remained in effect until Wiebke's death.

In 2016, Wiebke began having health issues. She managed to remain in her home until 2019, with help from Ketih and his ex-wife, who assisted her with finances, groceries, and medication. Wiebke's relationship with Joan deteriorated, culminating in Wiebke requesting in the fall of 2016 that Joan no longer contact Ms. Wiebke.

In June 2017, Keith contacted attorney Ethan Epley on Wiebke's behalf to prepare two quitclaim deeds transferring ownership of her properties to Keith. Wiebke hoped to avoid having probate and qualify Ms. Wiebke for Medicaid benefits. Epley discusses the matter with Wiebke, and it was clear Wiebke wanted to transfer these properties to her son Keith because of the care she had received from Keith. Thereafter, Wiebke moved to a nursing facility. During that time, it was clear she did not want Joan to visit her and was also clear that Wiebke had the mental capacity of a normal person during her stay at the nursing facility. Wiebke died in 2019. Wiebke's will provided that her home was to go to her five grandchildren in equal parts, half of her real property to Keith and the remaining half equally to Keith and Joan. Joan died one year later, survived by three children. One of her children, Monte Keller, sought appointment as a special executor of the Wiebke estate to investigate whether the transfer of property to Keith was the result of undue influence.

Following a hearing, the District Court entered an order finding there was a confidential relationship between Kieth and Wiebke. Kieth's efforts to care for Wiebke, "belie an intention to wrongfully procure an improper favor." The District Corut found that "Wiebke knew what she was doing and had legitimate, rational reasons for doing it." The Court dismissed Keller's petition.

The claim of undue influence consists of four elements:

> (1) The [grantor] must be susceptible to undue influence, (2) opportunity [on the part of the grantee] to exercise such influence and effect the wrongful purpose must exist, (3) a disposition [on the part of the grantee] to influence unduly for the purpose of procuring an improper favor

must be present, and (4) the result must clearly appear to be the effect of undue influence."

If a party challenging the transfer of property can show a fiduciary or confidential relationship existed, the transfer was considered presumptively fraudulent. The burden of proof then shifts to the grantee to negate a presumption of undue influence by clear, convincing and satisfactory evidence. The grantee must show he acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily.

There is no question in this case that Ketih had a confidential relationship with Wiebke because he was her attorney-in-fact. Therefore, the Court of Appeals had to review the transfer as presumptively fraudulent absent clear and convincing evidence to the contrary. The Court of Appeals relied upon testimony from long-time family friends, the local deputy sheriff, neighbors, and other long-time friends as well as attorney, Epley regarding the transfer of the properties to Keith. The Court found that "undue influence is seldom capable of direct proof and that Keith was able to exercise undue influence if that were his intent. However, the help he was providing Wiebke went above and beyond what most would do in similar circumstances. His efforts belie an intention to wrongfully procure an improper favor. When the transfers were made Wiebke knew what she was doing and had legitimate rationale reasons for doing it. The Iowa Court of Appeals affirmed the District Court finding that Keith had established by clear and convincing evidence, the transfer of properties were not a result of undue influence.

T. Shad Baltimore v. Dallas County and Alternate Route Properties, LLC
Iowa Court of Appeals No. 23-0142. Filed February 7, 2024

Shad Baltimore appeals the District Court decision finding that the Dallas County Board of Supervisors did not act illegally by rezoning a portion of the property owned by Alternate Route Properties, LLC from agricultural to light industry. This case involves a parcel of about 2.5 acres of land in Dallas County. The property abuts a county highway. In 1970 the property was owned by John Penick. He sought to have the property rezoned from agricultural to industrial for the purpose of manufacturing concrete products. The Board approved Penick's request but specified there should be a 150-foot agricultural buffer around the perimeter of the property. There is no evidence that this agricultural buffer was ever constructed when Penick owned the property.

In 2021, Penick sold the property to Alternate Route, which intended to operate a commercial landscaping business at that location. Alternate Route filed a request with the Dallas County Planning and Zoning Commission asking to have the entire property rezoned to an industrial classification, thereby eliminating the 150-foot agricultural buffer. Alternate Route installed a six-foot privacy fence between its property and that of Baltimore.

Baltimore objected to the rezoning request. He noted that several properties in the area were zoned residential. Baltimore stated the proposed rezoning did not comply with the Dallas County Comprehensive Plan and constituted illegal spot zoning. Despite these

objections, the Commission recommended approval of the rezoning. It found the 150-foot agricultural buffer area was "excessive and does little to minimize adverse impacts."

The matter proceeded to a public hearing before the Board on November 30. This hearing was delayed until the January meeting when the Board found that the rezoning of the property was consistent with the Comprehensive Plan and approved the petition to make the entire parcel light industrial.

Baltimore then filed a petition for writ of certiorari, claiming that the Board's action was illegal, arbitrary and capricious and it was not supported by substantial evidence. He also asserted the Board failed to comply with the Comprehensive Plan and engaged in illegal spot zoning.

The District Court concluded the Board's decision was supported by substantial evidence and was not illegal, arbitrary or capricious and was not an abuse of discretion. Baltimore appealed that decision to the Iowa Court of Appeals. The Iowa Court of Appeals reviewed Iowa Rules of Civil Procedure 1.1401 which states "An inferior tribunal commits an illegality if the decision violates a statute, is not supported by substantial evidence, or is unreasonable, arbitrary, or capricious." The Iowa Court of Appeals will review a District Court's ruling on the petition for writ of certiorari for the correction of errors at law. The Iowa Court of Appeals is bound by the District Court's findings if it is supported by substantial evidence.

The Iowa Court of Appeals found that rezoning of the Alternate Routes individual property to eliminate the 150-foot agricultural buffer is a change that would not require an amendment to the Dallas County Comprehensive Plan. The court determined that amending the Comprehensive Plan is only required when there is major changes and not to a minimal change in a property's character.

The contention that the change was not in accordance it the Comprehensive Plan, The Court found that there was substantial evidence in the record to support the District Court decisions that the board acted consistent with the Comprehensive Plan.

Baltimore challenged that the elimination of the 150-foot barrier as an illegal spot zoning. The Court indicated that to determine if spot zoning is valid, the Court considers (1) whether the new zoning is germane to an object within the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan. Each case is dependent on its own particular facts.

The Court concluded that the reasonableness of the Board's decision was debatable, as it was supported by competent and substantial evidence. The rezoning of the 150-foot agricultural barrier to light industrial did not create a small island of property with a use different than that of surrounding area. The majority of the property had been zoned light industrial since 1970 and the rezoned area was attached to the light industrial area. The Court found that this was not an illegal spot zoning.

The Court concluded that on the rezoning of the property the Court would not substitute its judgment for that of the board when the reasonableness of the board's decision is debatable.

The Court of Appeals affirmed the District Court's decision.

U. Rochon Corporation of Iowa, Inc. n/k/a Graphite Construction Group, Inc. v. Des Moines Area Community College
Iowa Court of Appeals No. 22-2098. Filed February 7, 2024

This is a case dealing with a public construction project owned by Des Moines Area Community College (DMACC). DMACC employed Graphite Construction Group, Inc. as a principal contractor on the public construction project. In a public construction project, there is always a retainage held by the owner pursuant to Iowa Code §573. In this case there was a subcontractor's claim that was filed before the project was completed. Graphite Construction, Inc. filed a bond in an amount twice the amount of the subcontractor's claim. Graphite requested the bond amount in the amount of $434,442.64 pursuant to Iowa Code §573.16.

Graphite Construction relied on Iowa Code §573.16(2) maintaining that once it bonded off the claim filed by Metro Concrete, DMACC was statutorily required to release to Graphite an amount equal the full amount the bond. DMACC responded that §573.28(2)(c) provides it with authority to withhold certain retainage funds for the value of uncompleted work and materials while still complying with Iowa Code §573.16(2). There was also the question as to whether Iowa Code §573.21 allows a principal contractor to recover attorney's fees if successful in obtaining the release of retainage funds.

Metro Concrete submitted a claim alleging Graphite Construction owed Metro $217,221.32 at the completion of its subcontractor work. Metro initiated the current lawsuit. Graphite Construction made an early request of retainage funds relying on Iowa Code §573.16(2) for the authority that DMACC was required to release twice the amount of Metro Concrete's claim from retainage once Graphite Construction bonded off the claim. The issue was whether Graphite Construction was entitled to immediately have the retainage released for the Metro Concrete claim in the amount of $434,442.64 or whether or not it must wait for a portion of the retainage needed until the project was completed and accepted by DMACC. The District Court denied the request of Graphite based upon timing of the request by Graphite.

Rather than a simple yes or no regarding whether §573.16(2) applies at this point in the construction project, it could be both §573.16(2) applies and DMACC's release of the retainage funds are simultaneously governed by another statute §573.28(2)(c). If the third option is correct, the Court of Appeals had to decide what happens when as here, there is not enough retainage funds for the public owner to both release the full bonded off amount for a subcontractor's claim and retain the value of 200% of the unfinished work and unprovided materials as provided by statue. DMACC released the retainage

funds up the amount which allowed them to retain monies to pay for the uncompleted work on the project as required by Iowa Code §573.28. The Iowa Court of Appeals reversed the District Court finding that Graphite Construction's request for release of the full value of the surety bond from the retainage funds is timely and appropriate under §573.16(2) and because DMACC cannot rely on §573.28 to withhold some retainage based on the value of uncompleted labor and materials, the court reversed the decision of the District Court and remanded for an order granting payment from the retainage fund in the amount of $82,627.78, plus interest as provided in §573.16(2) to make Graphite Construction whole for bonding off the claim of Metro Concrete. The Court of Appeals found there was no interplay between Iowa Code Sections 573.16(2) and 573.28.

The court did not award attonreys fees.

Legislation

1. House File 111 - An act relating to an exception to the real estate transfer tax for deeds that transfer distribution of assets to beneficiaries of a trust.

2. House File 270 – An act relating to certain deadlines relating to the informal review and protest of property assessments in counties declared to be a disaster area.

3. House File 332 – An act relating to the disposition of real property belonging to the state by the director of the department of administrative services.

4. House File 432 – An act relating to access by certain entities to specific records and documents maintained by unit owners association.

5. House File 475 – An act relating to unfair residential real estate service agreements.

6. House File 607 – An act relating to real estate licensee liability.

7. House File 609 – An act relating to specified loans provided by a mortgage banker.

8. Senate File 445 – An act relating to protests considered by local board of reviews.