DRAKE LAW SCHOOL
REAL ESTATE TRANSACTIONS
CASE LAW AND LEGISLATIVE UPDATE
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Case Law

A. Third Federal Savings & Loan Association of Cleveland v. Randy L. Beltramea, L.L.C.

Iowa Court of Appeals No. 16-1651: Filed June 7, 2017

Randy Beltramea owned property in Linn County Iowa. He mortgaged the property in 2003 to the predecessor of the Plaintiff. He went into default on the loan in February of 2014 and this foreclosure action commenced. There was a lien on the property to Randy Beltramea's ex-wife, Carol Beltramea, for child support. Carol was named in the foreclosure action and stated in her answer that if a decree of foreclosure is entered she requests that the decree provide that the proceeds remaining after satisfaction of the amounts due to Third Federal, if any, be distributed to junior lien holders in accordance with their lawful priority. Randy tried to assert in his answer and in his resistance to the motion for summary judgment filed by Third Federal that the child support interests of Carol were superior to Third Federal's interest in the property and that he had the right to assert that claim. The district court disagreed holding that he did not have standing to assert any type of interest of Carol in and to the property as he was a judgment debtor of Carol, a judgment creditor. On appeal, Randy asserts that the judgment debtor of a child support lien has standing to assert the priority of that lien as to Third Federal's mortgage and the child support lien and judgment are superior to Third Federal's mortgage. The Iowa Court of Appeals affirmed the district holding that generally a party does not have the right to assert other party's claims. A third party may assert a claim of a third party in limited circumstances where (1) the litigant has suffered an injury in fact; (2) the litigant must have a close relationship to the third party; and (3) there must exist some hindrance to the third party's ability to protect his or her own interests. The Court did not find such facts in this case and denied his right to assert the lien. The Court also went on to hold that the lien was not superior to that of Third Federal. Each child support installment becomes a final judgment and lien when it becomes due and attaches at that time. The life of each lien is 10 years; therefore, any delinquent child support that was due in 2003 expired prior to the commencement of this action in 2014 by Third Federal. Each child support obligation when it becomes delinquent becomes a lien and not before. The district court action was affirmed.

B. Rehr v. Guardian Tax Partners, Inc.

Iowa Court of Appeals No. 16-1962: Filed April 19, 2017

The holder of a tax sale certificate appeals the district court's order setting aside its deed as void due to the insufficiency of its proof-of-service affidavit. A property located in Clinton County, Iowa was sold at tax sale for delinquent taxes on June 18, 2012. A

certificate of purchase from the county treasurer was issued and then assigned to Guardian. No one redeemed the property by June of 2015 and the certificate-holder Guardian took action to serve a notice of redemption, stating in part the following: "the right of redemption will expire and a deed . . . unless redemption is made within ninety days from the completed service of notice." Guardian's ninety-day period of redemption began as a provided in Iowa Code § 447.12 upon filing of the affidavit. That affidavit was filed, the ninety days ran and a deed was issued. On March 22, 2016, the owners, the party in possession, and 1st Gateway a first mortgage holder on the property filed a petition in equity alleging Guardian did not comply with Iowa Code § 447.9 through 447.12. Those parties alleged that Guardian's affidavit was insufficient under § 447.12 by failing to state under whose direction the affidavit was made. The plaintiffs asked the district court to enter a judgment declaring the treasurer's deed void. The district court agreed with the owners of the property and the mortgage holder and held that the affidavit was not sufficient under Iowa Code § 447.12. Iowa Code § 447.12 states in relevant part: "service is complete only after an affidavit has been filed . . . showing the making of the service, the manner of service, the time when and place where made, and under whose direction the service was made." These requirements are mandatory and are liberally construed in favor of the party challenging the deed. The affidavit in question was filed by the attorney for Guardian. In part the affidavit stated that Guardian mailed the Notice of Right of Redemption to certain parties and Guardian published notice of the expiration of Right of Redemption. The district court found that Guardian's affidavit of service was incomplete in not stating that Richardson-Severn, who is the attorney, served the notice either by mail or by publication but rather stating that Guardian mailed the notice and Guardian published the notice. The court reasoned, because Guardian is an entity that must necessarily act through an individual, the affidavit was defective and not specifying "the individual who accomplished the acts constituting service, and that the person acted at the direction of the certificate holder." Guardian alleged in its appeal that the district court's very narrow and restrictive interpretation of § 447.12 claims the result "defies common sense." The Iowa Court of Appeals' reading of the case law showed that by requiring Guardian's absolute compliance with § 447.12 requirements for its proof of service affidavit the district court was following well established precedence. The Iowa Court of Appeals is following the precedent that tax sale statutes are narrowly interpreted and all requirements of the statute have to be met. The Iowa Court of Appeals went through an analysis of various cases dealing with an interpretation of tax statutes and they ultimately decided that the district court was correct and affirmed the decision holding that Guardian as a corporation, must act as an individual, and such individual must be named, not presumed, in the affidavit to satisfy the proof of service requirements in Iowa Code § 447.12. Because Guardian's proof of service affidavit failed to show who served the notice and concomitantly under whose direction service was made the district court correctly held Guardian's affidavit of service did not comply with the statutory requirements of Iowa Code § 447.12 and Guardian's tax deed was void.

C. City of Monroe v. Dustin M. Nicol and Michelle R. Street
Iowa Court of Appeals No. 16-1155: Filed May 3, 2017

Nicol and Street owned a home in Monroe, Iowa. They purchased the property in 2013. Beginning in May of 2013 and for over two years that followed, the City of Monroe sent them five letters regarding their failure to maintain the property. The City in April of 2015 filed a municipal infractions lawsuit citing several ordinance violations including the keeping of junk vehicles and garbage on the property. After a hearing the court entered judgment against Nicol and Street assessing civil penalties and ordering them to fully abate the violations. They did not do so. Nicol and Street also failed to pay property taxes on the property and also there were no utilities being used on the property since June of 2015. In January of 2016 the City petitioned for title to Nicol and Street's property alleging it was abandoned within the meaning of Iowa Code § 657A.10A(3) 2017. The defendants moved to dismiss the action on the grounds that the statute is unconstitutional, alleging Chapter 657A of the Code allows the taking of private property for a public purpose without just compensation to the owner. The district court found that the property met the definition of abandoned under Iowa Code § 657A and awarded the title to the city. The court also determined that Iowa Code § 657A was a legitimate exercise of police power and does not violate the Federal or Iowa Constitution.

The Iowa Court of Appeals went through an analysis whether a statute is constitutional and indicated that statutes are presumed to be constitutional. In order to rebut that presumption a person must show that the statute is unconstitutional beyond a reasonable doubt and negate every reasonable basis upon which this statute could be upheld as constitutional.

Iowa Code § 657A.10A provides that a city in which an abandoned building is located may petition the court to enter judgment awarding title to the abandoned property to the city. The property must be shown to be abandoned and some of the factors to be considered as to whether or not the property is abandoned is failure to pay property taxes as well as failure to have utilities connected to the house. Violations of the housing code are also another consideration to take into account to determine whether or not the property is abandoned. A property may be taken by the state under the police power if it appears that (1) the interests of the public require such interference (2) that the means are reasonably necessary for the accomplishment of the purposes and not unduly oppressive upon individuals. The process under Iowa Code Section 657A to take a property allows the owner of the property many opportunities to correct the problem before title is taken. The Iowa Court of Appeals found that the statute was constitutional and affirmed the district court decision.

D. First American Bank v. Urbandale Laser Wash, LLC, Walnut Creek Laser Wash, LLC and Steven Golden

Iowa Court of Appeals No. 16-0081: Filed January 11, 2017

This matter stems from a foreclosure action brought by First American Bank against the Defendants and for an in personam judgment against Steven Golden. The Bank tried to execute on the personal judgment by asking that his home be sold which is located in Clive, Iowa. The home is on a .94-acre parcel. The owner of the home, Steven Golden, filed an action asking that the sale be stayed and he then proceeded to file a homestead plat claiming that a .48-acre parcel out of the .94-acre parcel was his homestead and therefore was exempt from sale. The Iowa District Court adopted that plat. The bank argued that the homestead plat was invalid because it was not a proper certified plat or subdivision plat as defined in Iowa Code § 354 and 355. The plat did not conform to the city's zoning ordinances resulting in the creation of two non-conforming parcels. Golden resisted the bank's motion to strike the homestead plat noting that the plat was not required to be certified or a subdivision plat under Iowa Code § 354 and 355 and claiming it was proper under Iowa Code § 561. The homestead plat filed by Golden included the house, the driveway and a small portion of the property. The remaining portion of the property was not a conforming lot allowed to be subdivided under the City of Clive ordinances. The Court reviewed various code sections including Iowa Code § 561.16 which states in part: "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." The homestead is defined as "the house used as a home by the owner," and it is limited to a one-half acre piece of land if the property is in a city plat or not more than forty acres if it is agricultural land. In Merchants Mut. Bonding Co. v. Underberg, 291 N.W.2d 19 (Iowa 1980), the Court held that "homestead rights jealously are guarded by the law." Homestead laws are creatures of public policy, designed to promote the stability and welfare of the state by preserving the home where the family may be sheltered and live beyond the reach of economic misfortune. Homestead rights are purely statutory and get their vitality solely from the provisions of legislative enactment. The bank tried to argue that the ability of the court or the homeowner to plat a portion of the property as a homestead is limited to a local rules and ordinances governing the division of property in the locale. The Iowa Court of Appeals relied upon the case of Berner v. Dellinger, 222 N.W. 370, 371 (Iowa 1928) which stated as follows: "The right of a debtor to have a homestead, not exceeding 40 acres in extent, platted out of a larger tract on which he resides, is absolute and subject to but one limitation; that is, it must be set off so as to include the dwelling house or home of such debtor. Government subdivisions may be ignored and the area may be platted in any shape or form and from any part of the whole tract." The Iowa Court of Appeals affirmed the district court finding that there was no special declaration to the contrary as Iowa Code § 354, 355 or 414 did not state that a homestead has to be in compliance with those statutes. Although the remaining portion of the property which was left to the creditor to execute on was not a viable lot, the Iowa Court of Appeals affirmed the district court.

E. Johnson Propane, Heating & Cooling, Inc. v. The Iowa Department of Transportation

Iowa Supreme Court No. 16-0906: Filed March 3, 2017

The Iowa Department of Transportation condemned a portion of the landowners' property to complete the construction of a highway. The landowner waited until after the compensation commission decided the amount of damages to appeal its claim to the district court that the taking left it with an uneconomical remnant. The lower court dismissed the petition on summary judgment finding that the landowner's petition making its uneconomical remnant claim was untimely.

Johnson Propane, Heating & Cooling, Inc. owned property that abutted US Highway 20. The property was a .76-acre parcel. The Iowa DOT wanted .16 acres of that parcel and determined that it did not need the entire plot of land for the highway improvement. The remaining .60-acre tract left after the condemnation was not an uneconomical remnant as determined by the Iowa DOT. Thereafter the chief judge appointed a compensation commission whose purpose was to assess and appraise the damages because of the condemnation of the .16-acre parcel. The notice of assessment was served upon Johnson Propane on August 29. The commission was appointed, the appraisal was done and a compensation award was granted by the compensation commission of approximately $11,500.00. Johnson Propane then appealed that determination to the district court holding that due to the partial taking of the property it is virtually impossible for propane trucks to safely enter and exit the property. Without the ability to operate trucks on its property to collect and haul propane, Johnson Propane will no longer be able to use the remaining property in its business and therefore the remaining parcel was an uneconomical remnant. The district court upon a motion for summary judgment by the Iowa DOT determined that this challenge based upon the uneconomical remnant was untimely and that the challenge should have been brought within 30 days after the assessment was made by the Iowa DOT in determining whether or not it was an uneconomical remnant left after the condemnation of the .16-acre parcel. The Iowa Supreme Court determined that the only issue on appeal from the commendation award was the amount of damages owed by the acquired agency to the landowner due to the taking. Any question as to whether or not the remaining property was an uneconomical remnant has to be appealed within 30 days after the acquiring agency makes the assessment and determines that there is no economical remnant left after the condemnation. The acquiring agency makes that determination under the condemnation statute and therefore the property owner must appeal that decision within 30 days after the assessment is made. The appeal to the district court based upon the amount of damages is not the appropriate venue to determine whether or not the property remaining was an uneconomical remnant. The district court decision was affirmed.

F. DuTrac Community Credit Union and Kwik Trip, Inc. v. Radiology Group Real Estate, LC, et al.

Iowa Supreme Court No. 16-0661: Filed March 3, 2017

DuTrac owns property in Davenport, Iowa. DuTrac owned what was described as Lot 6 and the Southerly 20 feet of Lot 5 of Waterford Place. They were attempting to sell the property to Kwik Trip, Inc. As part of the due diligence, Kwik Trip, Inc.'s counsel discovered that the real estate was subject to a 1996 restrictive covenant that required the approval by an architectural control committee before any building or other structure could be erected on the property. The committee consisted of two named individuals. One of those members is now deceased and the other has indicated an unwillingness to be a part of the committee. The covenant in question states as follows: "No building or other structure shall be erected on any lot in this addition without the approval of the architectural control committee consisting of David W. Lundy and/or Dennis J. Britt. This shall be interpreted to include approval of the structure, design, building materials, site plan, landscaping and signage." DuTrac brought this declaratory judgment action, alleging that the restrictive covenant was no longer enforceable. They argued that it was ambiguous and it was an impossibility of them to perform under the terms of the covenant because of the members' situation. The district court found the covenant unenforceable due to the doctrine of impossibility and being impracticability. On appeal the Iowa Supreme Court affirmed that decision relying upon the Restatement (Third) of Property. The Restatement (Third) of Property states as follows: "When a change has taken place since the creation of a servitude that makes it impossible as a practical matter to accomplish the purpose for which the servitude was created, a court may modify the servitude to permit the purpose to be accomplished. If modification is not practicable, or would not be effective, a court may terminate the servitude. Compensation for resulting harm to the beneficiaries may be awarded as a condition of modifying or terminating the servitude." The Supreme Court determined that covenants can terminate due to changed conditions but they also can be modified to allow for the purpose to continue even if it's not possible to implement that covenant according to the original terms. The conditions that are required to allow for modification are: (1) the purpose of the restrictive covenant - can that purpose still be accomplished. This is a stringent test for relief to modify the covenant and (2) is modification or termination appropriate. The Iowa Supreme Court determined that the modification that was proposed by the appellants is not as a matter of law a practical or effective way to carry out the purpose of the restrictive covenant. The covenant as originally drafted reserved control over construction to the developers only. No succession plan was set forth beyond the two named individuals, and the required approvals had no stated criteria and applied only to initial construction, not remodeling. The Iowa Supreme Court felt that the original covenant was thus intended by design to be a limited-duration restriction that would run its course once, as the developers presumably anticipated all the lots would be quickly sold. Instead, as sometimes happens, the development took a long time to reach full maturity. The Iowa Supreme Court agreed with the district court that a committee comprised of all 18 of the lot owners, would not be comparable to the original covenant or practical modification of it. Therefore under the Restatement (Third) of Property circumstances had changed since

the creation of the restrictive covenant which makes it impossible as a practical matter to accomplish the purpose to which the covenant was originally created. Modification to the covenant as proposed is not practical nor would it be effective to accomplish the original purpose of the covenant. Termination of the covenant was appropriate. The Iowa Supreme Court affirmed the district court.

G. Intriligator v. Rafoth

Iowa Court of Appeals No. 16-0743: Filed February 8, 2017

This case deals with a roof that went bad on a property after it was sold by the Rafoths to the Intriligators. The sale was completed in August of 2012 and in 2013 and 2014 the metal roof leaked requiring the Intriligators to have the roof replaced two times. They brought this action pro se seeking to recover damages based upon the fact that the Rafoths violated the statutory disclosure requirements under Iowa Code § 558A, fraudulently misrepresented the roof's condition and breached the purchase contract by failing to disclose defects in the roof. The crux of their claims required proof that Rafoths failed to disclose information regarding the roof's condition they knew or reasonably should have known. After a bench trial, the district court found that the Intriligators failed to prove the elements of the claim and entered judgment in favor of the Rafoths. The case deals with various aspects regarding inadmissibility of evidence and expert witnesses that were not allowed to testify on behalf of the Intriligators. However, in the end, the court found that the parties who bring actions under Iowa Code § 558A have to prove by a preponderance of the evidence that the owners of the property knew or should have known that the defect existed on the property. The trial court concluded that they had failed to meet the burden of proof. They found that the Rafoths were particular about the way they kept their home leading the court to conclude that if there had been any problems similar to those complained of by the Intriligators it is not plausible that the Rafoths would not have abated them. The court found that there was substantial evidence supporting the court's findings and affirmed the district court.

H. In Re Steinberg Family Living Trust
David L. Steinberg v. Steven C. Steinberg

Iowa Supreme Court No. 16-0380: Filed April 28, 2017

Two brothers were beneficiaries of this family trust. The family trust provided that property located in Winnebago County would be bequeathed to Steven and property located in another portion of Iowa would be conveyed to David. During the lives of the Trustors the Winnebago property was sold and the Minnesota property was brought in to the trust in a like-kind exchange. There were no provisions to the trust instrument which provided that Steven would receive the Minnesota property. There was also a provision in the trust that indicated that Steven had the first right to purchase or rent the property conveyed to David. The issue before the court was whether the doctrine of ademption

was still applicable in Iowa. Ademption means that when a specifically bequeathed property is not in the estate at the time of the testator's death, the bequest was deemed. The Iowa Supreme Court noted that Iowa has always adopted a doctrine of ademption and only recently modified it somewhat to provide that if the party who conveyed the property away was under some kind of disability then the court may not apply ademption. Ademption was adopted in Iowa in the early 1900s. In the early 1960s the modified intention approach was adopted which would deal with situations where the party who owned the property and conveyed it away with under some kind of disability. Steven tries to argue that Iowa should not follow that rule and should adopt the provisions of the Uniform Probate Code to deal with this issue. The Uniform Probate Code provides as follows: "any real property or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real property or tangible personal property will go to that individual." The Iowa Supreme Court found that the Iowa legislature specifically omitted this section in the Uniform Probate Code that it had previously adopted and therefore the Iowa Supreme Court affirmed ademption in Iowa with only very limited exceptions.

The issue regarding the right to purchase or rent granted to Steven was an issue that was in dispute and therefore the court reversed the district court's summary judgment ruling regarding the ambiguity in the trust instrument.

I. Westlake Properties, L.C. v. Greenspon Property Management, Inc.

Iowa District Court for Polk County, Iowa; Case No. EQC 079895

This is a district court case in Polk County from August of 2016. Westlake Properties, L.C. sold certain property to Greenspon Property Management, Inc. Westlake as part of the sale also granted Greenspon the right of first refusal to purchase certain property adjacent to the property sold to Greenspon. This particular right of first refusal was filed in June of 1997. On April 11, 2016, the Plaintiff filed a petition in equity for quiet title pursuant to Iowa Code § 649 requesting the court declare the right of a first refusal void and having no further force and effect under Iowa Code § 614.17A.

The district found that in order to apply Iowa Code § 614.17A Plaintiff must show three things: (1) its claim arose more than 10 years ago; (2) that Plaintiff is in possession of the property, and (3) that Plaintiff has been the owner of the property for at least 10 years. The Defendant admitted that second and third requirements in its answer to the Petition. The Defendants disputes whether or not the right of first refusal is a claim against the property for Iowa Code § 614.17A to apply. The Iowa District Court found that it was a claim that would have lead to an actionable and valid claim by the Defendant after it had been filed in 1997. The district court found that the Defendant could have maintained the right of first refusal if it had filed an extension of the claim with the county recorder before the 10 years expired. The district court found that the right of first refusal was void after under Iowa Code § 614.17A.

J. Daniel Kline, et al. v. Southgate Property Management, LLC
Iowa Supreme Court No. 15-1350: Filed May 19, 2017

Three former tenants of Southgate Property Management, LLC brought this against the landlord for damages because the landlord's leases included several provisions known by the landlord to be prohibited provisions under Iowa Code Section 562A.. The tenants argued that Southgate leases included provisions imposing fees, charges and liquidated damages against the tenants. Examples of these fees would be a charge for a tenant's check that was returned for insufficient funds, a charge for unauthorized pets and an acceleration clause that would provide the tenant would immediately owe rent for the entire term of the lease in the event of an early termination. The tenants also claimed that certain provisions in the lease were prohibited because they limited the tenants' remedies. Those provisions included:

1. A provision that limited the remedies if the landlord was not able to deliver possession of the property to the tenant as agreed to in the lease.
2. A provision that stated all carpets be professionally cleaned at the end of the tenancy; and
3. A provision regarding a checklist detailing the conditions of the dwelling at the commencement of the lease.

The tenants also requested class certification. The district court concluded lease provisions imposing the fees and charges were prohibited under the act as they were set without any consideration of what Southgate's actual damages and fees would be in each situation. The court concluded also that the provisions limiting the remedies of the tenant was illegal and the carpet cleaning provision was also illegal. The district court also determined that class certification was proper. The landlord appealed the decision on the following grounds:(1) the provisions that were in dispute were actually not used by the landlord, (2) that even if the district court was correct in determining that the tenants had standing even though the provisions were not used that the provisions challenged by the tenants in the case are not prohibited under to Iowa Code § 562A, and (3) that the district court's certifying the class of tenants was improper.

The Supreme Court determined that the district court was correct in allowing the tenants to bring this action even though the provisions in question were not actually used by the landlord. The court went through an extensive discussion regarding the history and background of the Uniform Residential Landlord and Tenant Act under Iowa Code § 562A.

The district court determined that certain fees, charges and liquidated damages were illegal under the act. The Iowa Supreme Court relied upon a provision of the Uniform Residential Landlord and Tenant Act to Iowa Code § 562A.9(1) which states as follows:

> "The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including

rent, term of the agreement, and other provisions governing the rights and obligations of the parties."

The Court found that parties can contract between themselves provisions in the lease as long as they are not explicitly prohibited by the act. The Iowa Supreme Court reversed the district court on this issue providing there was no basis in determining all these provisions regarding fees, charges and liquidated damages are categorically prohibited under to Iowa Code § 562A.11(1).

The Iowa Supreme Court determined the delayed possession provision was a prohibitive provision under to Iowa Code § 562A.11(1)(b) because it constituted an exculpation or limitation of the landlord's liability arising under Iowa law. The court also found that the carpet cleaning provision was not prohibited as the carpet cleaning charges are not always charged and the apartment inspection checklist was also not found to be illegal as it was a method for determining the condition of the property at the commencement of the term.

The court also determined that certification was flawed in this situation because the decision did not have the required findings to allow for a class certification.

K. Walton v. Gaffey

Iowa Supreme Court No. 15-1348: Filed May 19, 2017

This case is a similar case to the one in Kline. However, in this case there were certain provisions in the lease that were somewhat different than those contained in the Kline lease. The tenant challenged these various provisions alleging these paragraphs were prohibited by the act and requested damages. The first provision that the tenant challenged were the fees for trash removal, parking violation, unauthorized pets, etc. The fees were addressed by the court in Kline and were found to be not categorically illegal in a lease.

Paragraph 20E of the lease in question addressed the landlord's liability for appliance failures. The provision provided in part: "In the event of the failure of an appliance that is furnished by LANDLORD under this rental agreement, LANDLORD'S sole responsibility shall be the repair or replacement of the appliance at the LANDLORD'S sole discretion. In no event or circumstance will LANDLORD be responsible for any loss of use or consequential damages caused by said appliance failure."

Paragraph 23 of the agreement provides: "LANDLORD shall not be liable for damage or loss of any of the TENANT's personal property for any cause whatsoever."

Paragraph 29 of the lease provides as follows: "LANDLORD shall have all carpeting professionally shampooed, paid out of tenants security deposit."

The Iowa Supreme Court found that these three provisions of the lease were prohibited provisions in that the first two provisions in paragraph 23 and 20E were attempts to exculpate or limit the landlord's liability in violation of Iowa Code § 562A.11(1)(d). The Iowa Supreme Court also agreed that the provision regarding carpet cleaning was illegal and that there was no showing upon imposition of the fee that the carpet was dirty beyond ordinary wear and tear. The Iowa Supreme Court relying upon the DeStefano case that found this provision was illegal in that it generates an automatic deduction from the rental deposit even when none of the conditions of Iowa Code § 562A.12(3) have been met.

The Iowa Supreme Court therefore determined that the automatic fees and liquidated damages were not categorically illegal under the act but the provisions limiting the liability of the landlord in paragraphs 20E, 23 and imposing costs on the tenant for carpet cleaning under paragraph 29 were prohibited provisions. The class certification was also reversed because there was not a factual finding as to the certification.

L. Luana Savings Bank v. Ronald Caspersen

Iowa Court of Appeals No. 16-1013: Filed March 22, 2017

Luana Savings Bank made a loan to William and Shelly Mack for the purchase of certain property located in Luana, Iowa. The bank made two loans to the Macks because they were unable to fund the entire purchase price of the home on their own. The first loan was in the amount of $71,350 signed by the Macks only and was secured by a mortgage on the property that was being purchased. The mortgage instrument indicated that it was for real estate loans of $71,350 and $17,000 dated April 18, 2009. The second loan for $17,000 was made on the consumer credit transaction form and signed by the Macks and an individual named Ronald Caspersen. This note is secured by three vehicles and made no mention of the mortgage instrument and indicated that the purpose of the loan was the balance of the home purchase. The Macks were not able to make the payments on their loan and conveyed the property back to the bank through a voluntary foreclosure under Iowa Code § 654.18. Caspersen continued to make weekly payments on the $17,000 loan. Caspersen then defaulted on the loan by not making a balloon payment due in April 2014. The home was sold by the bank for the sum of $80,000 which generated a surplus above the debt owed on the first note secured by the mortgage. Caspersen made an argument that he was entitled to the surplus from the first note and mortgage because the $17,000 note was incorporated in the open-end mortgage agreement. He felt that he was entitled to any surplus to be applied against the balance due on his note. The district court agreed and after several enlargements of findings of fact determined that Caspersen owed the bank $918.05. On appeal the bank argued that the note was not secured by the first mortgage given by the Macks. The bank argued that the note was not secured by the mortgage, the note did not reference the mortgage and Caspersen is not a mortgagor on the mortgage instrument. Caspersen argued that the mortgage was incorporated into the note as security based on the intent of the parties and the other security portion of the note. The Court of Appeals upon a review of the note

could not conclude that the parties intended to attach a security interest in the real estate to the second loan through the mortgage instrument. The note listed three vehicles as security for the additional funds and made no mention of being secured by separate mortgage instrument on the real estate. The note also did not list the legal description of the property address or any other identifying information of the property. The Iowa Court of Appeals therefore reversed the district court's finding that the note executed by Caspersen was secured by the mortgage.

M. City of Des Moines v. Mark Ogden

Iowa Court of Appeals No. 16-1080: Filed June 7, 2017

Mark Ogden owns a mobile home park at the corner of Park and Indianola Avenue in Des Moines, Iowa. The park is a legal nonconforming use under a 1953 City of Des Moines ordinance which nonconforming use certificate was issued in 1955. The certificate allowed the operation of a trailer court on the property contrary to the 1953 zoning ordinance which prohibited the use of a mobile home park. The city claimed that the use of the park now in 2015 was such that there are numerous violations of the zoning codes that were in place at the time the land was converted to a mobile home park. The city listed the various violations in a letter to Ogden. The letter warned the violations pose a threat to the health and safety of the occupants and the violations must be brought into compliance with the applicable code to prevent further legal action. No action was taken by Ogden and the city brought this action for an injunction against the property owner for the above listed violations. The district court determined that the 1955 certificate of occupancy validly established a vested right in a nonconforming use as a trailer court. However, since the initial issuance of the certificate, the use of the property has intensified and there is a need to discontinue the nonconforming use because of concerns for the safety of life and property. There was testimony at the district court level regarding fire hazards because of the way the park is now laid out and congestion in the park. On appeal the Iowa Court of Appeals determined that there was a danger to the safety of life and property and that the park had exceeded its previous nonconforming use and intensified such use that the non-conforming use certificate was now invalid. The court went through an analysis of the various case law concerning nonconforming uses and determined that a nonconforming use can remain on the property as long as it is not enlarged or extended and as long as it does not cause danger to the safety of life and property. The Court of Appeals affirmed the district court's finding that the nonconforming use status could be revoked for the safety of life or property and because the nonconforming use had exceeded its original use by expanding the structures and reducing the open space of the mobile home park that violated multiple city ordinances. Judge Danielson dissented finding that the city did not establish that the use had been changed and intensified and that the use of the park did not affect the safety of life or property.

N. Estate of Dorothy Harris v. Harris, et al.
Iowa Court of Appeals No. 16-0408: Filed March 8, 2017

This case deals with the mental capacity of an individual to sign a quitclaim deed. Dorothy Harris, mother of Randall Harris, Robert Harris and Richard Harris executed a quitclaim deed for her property located in Floyd County, Iowa. The deed was executed in March of 2011 and was executed to convey the property to her youngest son Randall. The mental capacity of Dorothy were raised by various parties since 2008. In 2011 Randall took his mother to an attorney to have a quitclaim deed executed transferring the property to him. The mental capacity of Dorothy was put into issue and after her death the estate brought this action to quiet title to the property to the estate asking that the court determined that the quitclaim deed was invalid. The district court determined the quit claim deed was invalid and set it aside. On appeal the Iowa Court of Appeals affirmed the district court. The party alleging lack of mental capacity sufficient to execute a deed has the burden of proving by clear, convincing and satisfactory evidence that the grantor did not possess sufficient consciousness or mentality to understand the impact of her acts when the deed was executed. The facts that a court will consider to make this determination are the grantor's physical condition; the adequacy of consideration; whether or not the conveyance was improvident; the relation of trust and confidence between the parties to the conveyance, and the weakness of mind of the grantor's judgment as to other acts within a reasonable time prior and subsequent to the act sought to be impeached. The Iowa Court of Appeals determined that because there is no consideration given for transfer; the grantor was in poor physical condition; the grantor did not have independent advice regarding the transfer of the property; and the witnesses stated her lack of mental capacity. The Court of Appeals affirmed the district court and held that the quitclaim deed should be set aside.

O. Thompson v. JTTR Enviro, L.L.C.
Iowa Court of Appeals No. 16-1610: Filed July 19, 2017

Thompson purchased approximately 146 acres of farmland from a party named Langel in 2012. The Langels retained a 10.25-acre parcel upon which a hog farrowing facility was located. The contract of purchase provided that Thompson would give the Langels a permanent easement on the 146 acres and a separate manure easement would be created at closing. The contract recited that the Langels or owners of the existing swine facility will place manure on the 146 acres. If the Langels or the existing swine facility used the easement Thompson would pay all pumping and application costs. The contract provided that Thompson receive enough manure to cover the 146 acres and any additional manure generated by the facility would be available to Thompson at market price. Application would be permitted after crops are harvested in the fall of any calendar year and up until the time of planting the following spring. The agreement was to be permanent and run with the land and was binding upon successors of interest of the facility and the land.

The Langels utilized the facility as a farrowing hog facility. In August of 2012 the Langels sold the facility to JTTR Enviro, LLC. JTTR changed the type of facility to a hog finishing facility wherein the manure apparently is much more nutrient-rich and much more expensive than manure from a hog farrowing facility. In the fall of 2013 it became necessary to empty the pit. Thompson demanded enough manure to apply on his 146-acre parcel consistent with a manure easement agreement. JTTR filed a manure management plan which provided that Thompson would maintain a corn-soybean rotation. Because of the nitrogen credit associated with raising soybeans, no manure would be applied in bean years. JTTR demanded that manure be applied every other year or that 73 acres of manure would be provided annually. Thompson accepted 73 acres of manure in the fall of 2013. Since that time Thompson has received no further manure. In May of 2014, Thompson filed this suit alleging JTTR breached the manure easement agreement by not providing enough manure for the entire146 acres on an annual basis. The district court returned a verdict in favor of Thompson awarding damages in the amount of $70,433.93 plus $15,451.81 in attorney fees. JTTR appealed this decision.

There are several arguments that JTTR has made regarding the decision of the district court.

JTTR first argued that the court erred in imposing a burden upon it because the document at issue was an easement agreement. As the benefactor of the easement agreement they argued that no burden could be imposed on them. The Court of Appeals found that the law recognizes that burdens are also placed on easement holders. Easements are subject to ordinary contract principles and therefore they found that burdens could be placed upon easement holders. The argument of the type of finishing manure was also raised by JTTR. JTTR argued that manure from the finishing barn is much more nutrient rich than manure from a farrowing barn and that the manure easement agreement clearly contemplated that the agreement would apply to a farrowing barn not a finishing barn. The district court reviewed the document and found that there was no language in the manure easement agreement indicating either party intended that the manure easement agreement applied only to farrowing manure as opposed to finishing manure. The contract was written to apply generally to manure and other animal waste generated by livestock facilities. The court rejected the argument of JTTR in trying to limit the amount of manure that they would have to provide to Thompson. JTTR next argued that the district court erred in determining the manure easement agreement applied to a corn-on-corn rather than a corn-on-soybean crop rotation. The parties to the agreement both testified exactly opposite of each other with Langel stating that the MEA was to employ a corn-on-soybean rotation which would be every other year and Thompson testified that a corn-on-corn rotation was contemplated. The district court found that the testimony of Thompson was more convincing. The court also relied on language of the manure easement agreement which stated as follows:

> "Application of the manure shall be permitted after crops are harvested in the fall of any calendar year during the term of this agreement and up until the time for planting the following spring."

This language indicated there was no reference to fertilizing taking place every other year or that fertilizing would only occur on half of the property each year. The court found that the corn-on-corn crop rotation interpretation was in accordance with the actual easement agreement. The court affirmed the district court's ruling except for the amount of damages which amount of damages was modified.

P. Shop N Save Food v. City of Des Moines Zoning Board of Adjustment
Iowa Court of Appeals No. 16-1655: Filed August 2, 2017

A convenience store located on 6th Avenue in Des Moines, applied for a conditional use permit that would allow the business to sell wine and beer. The property is located in a C-1 neighborhood retail commercial district. Previous owners of the store have been permitted to sell liquor, beer and wine but the store's liquor license was suspended for the year leading up to the current application. Due to changes in the zoning regulations the new owner was required to seek a CUP to engage in the sale of alcohol. The owner filed the application in early March 2015 and the board set the matter for public hearing on April 22, 2015. At the beginning of the hearing the city staff member presented a written report which recommended approval of the CUP subject to 10 conditions. Community members in the area acting on behalf of the neighborhood associations spoke out against the issuance of a CUP primarily citing concerns about crime. They felt that crime had increased in the area since the alcohol was allowed to be sold at this location as well as other issues with the sale of alcohol. In a 4-1 vote the board denied the CUP. Board members expressed concern about the ambiguity in the transfer of ownership and the problematic history of the location. In a written decision issued after the hearing the board reasoned the proximity of the property to residential areas combined with the years of problems associated with the site disqualified the subject party for the requested CUP. The board concluded as follows:

> "The premise is not sufficiently separated from residential uses to adequately safeguard the health, safety and general welfare of the persons residing in the adjoining or surrounding residential area. This was evidenced by documented nuisances experienced when the property was previously operated as a business selling alcohol. A limited food/retail sales establishment selling beer and wine at this location would not be consistent with the intended spirit and purposes of the zoning ordinance and would alter the essential character of the locality of the land in question."

Shop N Save then filed a petition for writ of certiorari alleging the board's denial of the CUP was an illegal action and error of law. The district court heard oral arguments in July of 2016 and on September 4, 2016, the court affirmed the denial of the Shop N Save's application finding substantial evidence in support of the board's decision. Shop N Save then appealed the district court's order. The Court of Appeals went through an analysis of decisions by board of adjustments. The decision by a board of adjustment

enjoys a strong presumption of validity. If the reasonableness of the board's action is open to a fair difference of opinion the court may not substitute its decision for that of the board. The Court of Appeals is also bound by the district court's factual findings if they are supported by substantial evidence in the record.

The court went through an analysis of the CUP finding that a conditional use permit is meant to provide flexibility in what otherwise would be a rigidity of zoning ordinances while at the same time controlling troublesome aspects of somewhat incompatible uses by requiring certain restrictions and standards. The City of Des Moines ordinance requires that a CUP be issued if the business satisfies several criteria. Two of the criteria were relied upon by the board in denying the application for a CUP. Those conditions that they felt were not met were as follows:

1. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

2. The operation of the business will not constitute a nuisance.

The board of adjustment found that the operation of the convenience store with the sale of beer and wine would not adequately protect the health, safety and general welfare of the neighborhood. The court felt that based upon past activity in the area that the issuance of a CUP would not satisfy this requirement. There was substantial evidence in the record is to support the board's decision to deny the CUP. The court also determined that the board of adjustment made a determination that the noise generated by the business would be a nuisance and therefore that would have a detrimental impact upon the adjoining residential area surrounding the convenience store.

The Court of Appeals therefore affirmed the district court finding at the time of the board of adjustment hearing the transfer to a new management had not yet occurred and the pending owners expressed a timid responsiveness to the neighbors' serious reservation about the retail sale of beer and wine at this location. These circumstances signaled to the board that past problems at the location would likely continue into the future regardless of any conditions the board could impose on Shop N Save's operation. The board's decision was based on substantial evidence. The Court of Appeals affirmed the district court's decision affirming the board's denial of the CUP.

Q. Alta Vista Properties, LLC v. Mauer Vision Center, P.C.
Iowa Court of Appeals No. 16-1897: Filed August 16, 2017

This case has been before the Iowa Court of Appeals and the Iowa Supreme Court over the past few years regarding an interpretation of a lease provision regarding access to the property leased by Mauer Vision Center, P.C. from Alta Vista Properties, L.C. Alta Vista Properties, L.C. was attempting to sell the property where Mauer Vision

Center, P.C. was located. Mauer Vision Center, P.C. had a right of first refusal on the property. Prior to the property owner receiving an offer to purchase from an individual named Dalstrom, the real estate agent asked the representative from Mauer Vision Center, P.C. if the agent could have access to the property for purposes of showing it to prospective purchasers. The representative of Mauer Vision Center, P.C. stated no and relied upon a provision in the lease where access was not permitted until 90 days before the end of the lease term. Dalstrom then made an offer on the property for $950,000. The offer was later withdrawn, another offer was provided by Hawthorn with added additional properties. Alta Vista allocated $600,000 of the total purchase price to the Mauer Vision property. Mauer Vision then exercised their right of first refusal and purchased the property for $600,000. During this period of time, the declaratory judgment action regarding the interpretation of the lease agreement was being addressed by both the district court, Court of Appeals and Iowa Supreme Court. Ultimately, the Iowa Supreme Court indicated that the provision regarding access only during the last 90 days of the lease term was not applicable to the showing of the property to prospective purchasers but only when more intensive notice is given when the lease about to expire. This action was brought by Alta Vista claiming damages and a breach of contract because of the denial of access to the property. The district court entered judgment for Mauer Vision finding that there was no evidence that the denial of access to the Mauer Vision property was the reason that Dalstrom terminated their offer. Alta Vista tried to assert that the Supreme Court did find a breach of the lease in their opinion and the district court was precluded from finding otherwise. The Court of Appeals stated that Alta Vista misread the Supreme Court's opinion. Alta Vista had not cited any authority for the premises that the impending litigation concerning the interpretation of the lease or past refusal can substitute for a new breach of contract causing damages. The damages must naturally arise from the breach. The Supreme Court opinion did not state that the breach occurred but merely interpreted the lease to provide that prospective purchasers of the property could have a reasonable access to the leased premises. The decision of the district court was affirmed.

R. Summit Veterinary Services, LLC v. Marlyn J. Tindle and Toni M. Tindle
Iowa Court of Appeals No. 16-2077: Filed August 16, 2017

The Tindles own property in Winterset where they operated their chiropractic clinic. The property is bordered on the north by West Summit Street, on the west by U.S. Highway 69 and on the east, is a parcel of land in which the veterinary clinic was built in 1979. Summit Veterinary purchased the veterinary clinic in 2015. Access to both the veterinary clinic and the Tindles property is by gravel driveway from West Summit Drive. An asphalt driveway runs from the Tindle home to the east, paralleling West Summit Street, transitions to gravel at its east end, and then turns north to intersect with West Summit Street. This is the only access the Tindles have to their property. The Tindle's driveway was gravel when they purchased the property and over the years they have paved it. In 1979 the veterinary clinic's first owner constructed a fence south of and parallel to where the asphalt drive now runs. The Tindles assisted in the construction of

the fence and they heave maintained it over the years. The Tindles constructed two carports on the north side of the property. The Western most carport was constructed in 2000 and in 2006 they began construction on the eastern carport.

Summit Veterinary initiated the present action after review of a property survey revealed that it owned the land north of the fence on which the asphalt driveway and carports are located. Summit Veterinary then filed a petition seeking to quiet title of the real estate in its favor. The Tindles counterclaimed alleging they acquired title to the property by adverse possession. The district court found for the Tindles finding that they had proven their adverse possession claim and then quieted title to the property in the Tindles.

To establish adverse possession proof must be provided by clear and convincing evidence to show a party has acquired title by hostile, open, exclusive and continuous possession of that property under claim of right or color of title for a period of at least 10 years. In this instance, they were asserting a claim of right as they did not have any actual title document to this area in question. The district court as well as the Iowa Court of Appeals found that the act of paving the driveway with asphalt and constructing two carports and a concrete lot upon it clearly established the Tindles used the disputed property as if they owned it and did so adversely to the true owners' rights. Tindles mistaken belief they owned the land does not defeat their claim but rather shows the necessary good faith in claiming a right to the land. The Carpenter v. Ruperto case from 1982 states that an adverse possession claim cannot succeed if the Claimant knows it lacks title to the property and has no basis for claiming an interest in the property because the requisite good faith claim of right cannot be established.

The court found that by clear and convincing evidence the Tindles had established their adverse possession to the property and awarded title to them. The Court of Appeals affirmed.

S. West Lakes Properties, L.C. v. Greenspon Property Management, Inc.
Iowa Court of Appeals No. 16-1463: Filed September 27, 2017

This case is an appeal of the district court case referencing paragraph I above. Greenspon Property Management, Inc. appeals the district court order on summary judgment finding its right of first refusal unenforceable under Iowa Code § 614.17A. The appellants argue that (1) section 614.17A applies only to claims against real estate and cannot invalidate a claim arising under contract and (2) inequities result from applying section 614.17A to the facts of the case.

The Iowa Court of Appeals wrote an analysis of Iowa Code § 614.17. The court found that 614.17A applies to a right of first refusal. The right of first refusal is an interest in or claim to real estate within the meaning of section 614.17A. The Court relied upon restatement third of property which describes the right of first refusal as

"servitudes that directly restrain alienation of interests in land." Greenspon also argued that the court cannot apply this section of the Iowa Code to the right of first refusal because it was a contract and therefore their claim for damages might be invalidated if the right of first refusal is found to be invalid. The Iowa Court of Appeals declined to review Greenspon's second claim because they found that Greenspon failed to preserve it for review. The next argument for appeal asserted by Greenspon was it would be inequitable to void the right of first refusal. The Iowa Court of Appeals stated that absent constitution concerns it is not for the court to overlook the language of a statue to reach a particular result deemed unjust under the particular circumstances of the case. The court found no concern that would permit them to disregard the language of section 614.17A and the district court action was affirmed.

T. Craig F. Graziano v. Board of Adjustment of the City of Des Moines
Iowa Court of Appeals No. 16-1753: Filed November 8, 2017

In this case a home owner challenges the issuance of a front yard setback exception to the neighboring property owner. Houses on 44th Street between Ingersoll and Grand Avenues in Des Moines, Iowa, must be setback at least 50 feet from the street. Property owner, Cecelia Kent asked the Des Moines Zoning Board of Adjustment to make an exception, allowing her to build a house with a front yard setback of just 30 feet. She bought this property from the Grand Oaks Condominiums. 44th Street is referred to as "Snake Drive" - it is a winding street between Grand Avenue and Ingersoll. She purchased the property from Grand Oaks Condominiums which property is a vacant lot behind the two-condominium buildings with the intent to build a single-family home facing 44th Street. However, a 30-foot easement for a public storm sewer running diagonally across the back of the undeveloped lot complicated Kent's plans. She applied to the Board of Adjustment for an exception to the district's 50-foot front yard setback. She alleged the exception was necessary to accommodate the construction of her new home with her anticipated footprint of 65 feet by 40 feet in a location that would not encroach on the easement. She also asked for two other items of variances. In her application, Kent stated that:

> "The property is bisected on the diagonal by a utility storm drain that runs from the middle of the eastern property line to the southwest corner of the proposed lot. . . . A public utility easement of [fifteen feet] either side of the storm drain necessitates that the proposed structure . . . will be limited in placement."
>
> The staff member's report on the issue stated as follows:
>
> "Staff believes there are practical difficulties in providing the necessary front yard setback given the shallow depth of property available for single-family development. If the front setback were met, it would likely require relief of the rear yard setback. In this instance, there is also a good portion

> of the rear yard that is encumbered by the public storm sewer easement making it a challenge to shift the proposed building footprint further east to increase the front yard setback."
>
> The report went on to say as follows regarding the neighborhood:
>
> "44th Street is a curvilinear street pattern between Grand Avenue and Ingersoll Avenue. The homes fronting 44th Street have varying front yard setbacks because the street is not straight north to south. The subject property is also the only parcel fronting 44th Street that does not extend as deep to the east. Staff believes reducing the front yard setback to [thirty] feet would remain in character with the surrounding neighborhood, so long as the home would be built with an architectural design that is compatible with surrounding residential properties."

The Plaintiff in this action, Graziano spoke in opposition to Kent's front yard setback request stating that the neighborhood had a stately character due to the large front yard setbacks on this segment of the street. He believed that in granting the setback exception would detract from the neighborhood aesthetic and diminish and impair established property values in the surrounding area. Another neighbor, Bill Brown, who lived next to Cecelia Kent's property spoke in opposition to the requests again expressing concerns regarding property values. In a 5-2 vote the board granted the front yard setback exception subject to conditions and denied Kent's other requests. The Board issued a written decision five days after later adopting nearly verbatim the rationale provided in the written report of the city' staff member.

On December 26, 2015, Graziano filed a petition for writ of certiorari with the district court challenging the board's findings and raising due process concerns. The district court affirmed the board's decision finding substantial evidence supporting the grant of the front yard setback and rejecting Graziano's constitutional claims. The Iowa Court of Appeals in reviewing the decision of the district court found that the board's decision enjoys a presumption of validity. They are bound by factfinding supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate to reach the given conclusion even if reviewing court might draw a contrary exception. The court did state that deference is not limitless to a board of adjustment decision and strongly encouraged zoning boards to take a more thorough examination of ordinance requirements in future proceedings. They found it was a close call in this decision to affirm the board's action. The Iowa Court of Appeals went through the analysis of the Des Moines Zoning Ordinance and found the essential requirements to grant a front yard setback. The Board must find:

1. Such exception does not exceed [fifty] percent of the particular limitation or number in question.
2. The exception relates entirely to a use classified by applicable district regulations as either a principal permitted use, a permitted accessory

use, or a permitted sign, or to off-street parking or loading areas accessory to such a permitted use.
3. The exception is reasonably necessary due to practical difficulties related to the land in question.
4. Such practical difficulties cannot be overcome by any feasible alternative means other than an exception.
5. The exception is in harmony with the essential character of the neighborhood of the land in question.

The court found that all of those requirements had been met and that there was substantial evidence to support the findings of the Board.

Graziano challenged those findings on the only feasible means requirement, essential character of the neighborhood, and the fact that the property values would go down if this exception was allowed to occur. The Court of Appeals found that there was substantial evidence to support the board's decision but again cautioned the board in general to make more substantial findings of fact supported by evidence in their written decisions.

U. City of Eagle Grove, Iowa v. Cahalan Investments, LLC
Iowa Supreme Court No. 16-1658: Filed December 1, 2017

The City of Eagle Grove challenges a district court order that found awarding the City title to two abandoned properties pursuant to Iowa Code § 657A.10A would constitute an unconstitutional taking and dismissed the City's petitions.

In this case, the City of Eagle Grove found that two properties owned by the Defendant, one on Blaine Street and one on Commercial Street were public nuisances. The properties were in severe condition, no water service connections to the properties, vermin were living in the properties and they were in very bad repair. The city initiated on both properties a public nuisance action and were attempting to have the economic development corporation in their locality purchase the properties from Cahalan to have the properties rehabilitated. However, after they began that process they decided instead to file a petition under Iowa Code § 657A.10A seeking an award of title to the properties. Cahalan resisted the city's petitions stating the acquisition of the properties under Iowa Code § 657A.10A would violate due process and constituted taking without just compensation in violation of the Fifth Amendment to the United States Constitution and Article I, Sections 9 and 18 of the Iowa Constitution. At the trial, the district court did find that both properties were abandoned under the criteria set forth in 657A.10A(3) but it dismissed the City's petitions concluding that the relief requested by the City would deny Cahalan all use of its properties and result in a taking without just compensation. The Iowa Supreme Court retained the appeal. The city claims that the district court erred in dismissing the petition because the actions brought under 657A.10A are valid exercise of the police power for which no compensation is owed to Cahalan.

The Iowa Supreme Court went through an analysis of 657A.10A. The factors that have to be considered by a court and decided as to whether a property is abandoned is extensive. In this case, many of the items noted to determine whether or not a property is abandoned were found to exist such as failure to pay property taxes, whether utilities are connected, whether the building is unoccupied, whether the building meets the city's housing code, whether the building is exposed to the elements, whether the building is boarded up, past efforts to rehabilitate the building, the presence of vermin, accumulation of debris and uncut vegetation, the effort expended by the petitioning city to maintain the building and grounds, past and current compliance with orders of the local housing official and any other evidence the court deems relevant. The district court found that these items had been met and the property was abandoned. The Iowa Supreme Court went through an analysis of a constitutional challenge to a statute in the State of Iowa. The court found that statutes are cloaked with a presumption of constitutionality. The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt. Moreover, the challenger must refute every reasonable basis upon which the statute could be found to be constitutional. The US Constitution provisions in question provides:

> "private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken."

The Iowa Supreme Court stated that to determine whether a statute gives rise to an unconstitutional taking a well-established analytical framework must be applied.

1. Is there a constitutionally protected private property interest at stake?
2. Has this private property interest been "taken" by the government for public use?
3. If the protected property interest has been taken, has just compensation been paid to the owner?

In this analysis, the court determined that because the owners of the property allowed the property to be abandoned they did not comply with Iowa Code § 657A.10A(3) criteria. Thus, it failed to indicate a present intention to retain the interest and therefore number 1 above failed. By allowing the properties to persist in a condition unfit for human habitation, Cahalan did not comply with that section and thus failed to show a present intention to retain the interest in the property. The court also found that the property had not been taken by government for public use because it was not per se taken arising from a regulation which denies the owner all economically beneficial ownership. This statute was in existence at the time that Cahalan purchased the one property and a previous form of taking a property that was a public nuisance was in existence in Iowa as to the other property. The court therefore found that at the time

Cahalan inquired the properties the transfer of the title to the city under 657A.10A would not constitute a taking for which compensation is required.

The Supreme Court determined that Cahalan had no constitutionally protected private property right. The district court's action was reversed.

LEGISLATION

1. House File 586 - Mechanic's Lien

2. House File 134 - Family Restrictions on Rental Properties

3. House File 146 - FED Actions

4. House File 371 - Quiet Title Actions

5. House File 478 - Tax Assessments

6. Senate File 413 - Statute of repose.

Revised Title Standards

1. 4.11
2. 9.8
3. 9.15
4. 9.16
5. 9.17
6. 9.18

Proposed Legislation

1. Revisions to Partition Statutes