DRAKE LAW SCHOOL
REAL ESTATE TRANSACTIONS

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REAL ESTATE CASE LAW & LEGISLATIVE UPDATE

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Case Law

A. Pettett v. Krughel

Iowa Court of Appeals No. 23-0448. Filed March 6, 2024

This case deals with an interpretation of restrictive covenants in a subdivision. The restrictive covenants provided for a subdivision building committee that had to approve all structures that would be constructed in the development until all lots had structures located on the lots. There were also specific provisions regarding what is required if you wanted to build a storage building on your property. In this case, the Krughels built a 1,496 square foot metal building on the residential lot in the Prairie Woods Estates Subdivision of the City of Blue Grass. They did not seek approval from the subdivision's building committee. The structure violated several covenants governing the design and placement of a storage building on the property. The Krughels built this building during the pendency of a lawsuit to try to prevent the construction of the storage building on the Krughels' lot. The Krughels went ahead and built the building prior to the trial and the District Court ordered the demolition of the storage building. The Krughels argued at District Court as well as on appeal that the building committee did not exist and because the nonexistent committee compliance with the covenant would have been impossible or impractical. The covenants were clear that there was a building committee for construction of dwellings on the property. The building committee would have no more than three members and would approve any structures constructed on the lots. There were also various restrictive covenants regarding a storage building if it was to be built on one of the lots. The storage building had to be (1) placed in the rear of the single-family residence and no closer than 20 feet from any lot line; (2) constructed of wood with a shingle type roof; (3) limited in size to no more than 180 square feet in area and in height to a single story; (4) matching in exterior design, color and placement to the single-family residence; and (5) reviewed and approved by the Building Committee prior to the installation. In this case the structure built by the Krughels was 1,496 square feet in size which was over eight times the maximum size allowed. It had steel siding and a steel roof rather than shingles. It was located on the street rather than in the back yard and placed eight feet from the property line rather than 20 feet. The Krughels tried to rely upon a case from the Iowa Supreme Court, *DuTrac Community Credit Union v. Radiology Group Real Estate LLC* 891 N.W.2d at 210 (Iowa 2017) where compliance with a requirement for approval by a building committee is excused by the doctrines of impossibility or supervening impracticability. In that case, the building committee was composed of two people specifically appointed by the developer. Certain individuals were named for the building committee and there was no indication that anyone else could serve on the building committee. The individuals either died or were not available any longer so the Court held that approval by the building committee was not necessary because of the doctrine of impossibility or supervening impracticability. Here, there was no such requirement. The restrictive covenant named two members who did not have to be anyone specific.

The Krughels were aware they were violating the covenants as the neighbors complained about the location of the material on the property and advised the Krughels not to build the building. The Krughels went ahead and built the building prior to trial and the

District Court ordered that the building be demolished. The Iowa Court of Appeals affirmed the District Court holding that the Krughels built a building on their lot in violation of the lot's restrictive covenants.

B. Country View Acres Homeowners v. Dickinson County, Iowa and Dickinson County Board of Adjustment

Iowa Court of Appeals No. 23-0772. Filed March 27, 2024

Woodlyn Hills Estates, LLC owned approximately 88 acres of real estate in rural Dickinson County. It applied for a conditional use permit with the Dickinson County Board of Adjustment to develop an RV park with 174 spots. Following public hearings the Dickinson County Board of Adjustment voted 3-2 to grant the permit. Country View Acres Homeowners Association, a nonprofit association of individuals who owns homes in Dickinson County near the proposed RV park, petitioned for a writ of certiorari to challenge the Board's decision. The District Court allowed Woodlyn Hills to intervene and following the admission of some additional evidence, the District Court annulled the writ. The homeowner's association appealed. Woodlyn Hills acquired this parcel to develop an RV park. Apparently, there have been many RV parks constructed in the area in recent years. There was opposition from residents in the area to RV parks because RV parks affect the quality of life in the Dickinson County area. Many of the RV parks relied upon a private sewage system which could damage the water in the lakes. RV parking caused congestion on the lakes, and they did not support the services provided to the parks through taxes. There was a hearing on April 25, 2022, to consider the conditional use permit. The procedures of the Dickinson County Board of Adjustment required that all testimony be included in the public hearing. Any written testimony received by the Board had to be read at the Board of Adjustment hearing. Woodlyn Hills presented its request for the conditional use permit and questions were asked by the Board. After the Board members had no more questions for the developer, some 69 letters and emails that were sent in support of or opposition to the granting of the permit were read aloud by an assistant of the Dickinson County Zoning and Environmental Health Department. She identified the authors of each letter and email but not their addresses. There was some objection by members of the audience that they had not heard anyting new in these objections and asked if the reading of the items be stopped. The Assistant County Attorney who was present responded that "They all have to be read because everybody gets their voice if they took the time to write an email or letter."

At the meeting in April there were some questions regarding the private sewer of the RV park. There was some discussion with a gentleman named Steven Anderson who was the mayor of the City of Milford. He indicated there might be a possibility that the sewers of the city could be used and connected to the RV park. There was discussion on this issue and the Board decided to continue the hearing to June 6 to allow some investigation as to whether the RV park could be connected to the sewer of the City of Milford. The Board would not accept any additional letters or public comments because the hearing was being continued and the portion for public comments was already closed. At the June 6 hearing the developer was allowed to present its case but no additional

comments or discussion was allowed by the opposition to the RV park. The Dickinson County Board of Adjustment approved the request on a 3-2 vote.

After the hearing in June, it became clear that some items that had been received by the Board prior to the April meeting in either support or opposition of the development had not been read at the public hearing. One email from William Van Orsdel who wrote on behalf of the Iowa Great Lakes Association was of concern. The email from William Van Orsdel expressed concern regarding the development of the RV park noting that there has been a large influx of RV parks in the area in recent years. There was also concern regarding no sanitary sewer connection and that septic systems would leak fluids into the lake causing pollution and damaging water quality. There was also concern regarding boat congestion on the lakes and car congestion on the roads. Property values would be lowered and there was general opposition by this Association to the development of the RV park.

The email had attached letters that were not signed. This email as well as a couple of the other items in support of the development were not read into the record at the April meeting.

The Iowa Court of Appeals in reviewing a writ of certiorari determined that it could set aside a decision by the Board of Adjustment if procedural rules were not substantially followed. There is no technical requirement of compliance but only substantial compliance. The Court indicated with a certiorari proceeding the District Court finds the facts anew only to determine if there was illegality not appearing in the record made before the Board.

The bylaws of the Board of Adjustment provide that oral or written statements can be tendered to by the Board by anyone interested in particular items at issue. Here the Board of Adjustment did not read all the letters including the letter from William Van Orsdel or other letters that were from individuals who supported the development. The Court was concerned that Woodlyn Acres was allowed to present new evidence and information at the June 6 hearing without the Board allowing public comment on the new evidence. The Board's rules provide that the applicant will likely have the last word – giving them an opportunity to present final summaries and arguments after closing the public comments. Woodlyn Acres was allowed to go well beyond just summary arguments here – and the public was barred from responding. This was an error.

The Court of Appeals stated that "considering all the procedural issues discussed, we conclude the Board failed to substantially comply with its procedural requirements and thus acted illegally." A remand of the case for reinstatement of the writ and for further proceedings, during which the Board shall reopen the record for public comment. The Board shall receive Van Orsdel's April 21 email and any correspondence submitted as attachment 4170 that have identifiable authors which were not read at the April 25 meeting, and the letters from Megan Skalicky and Seth Skalicky, before conducting another vote on whether to grant the conditional use permit. The Court took no position on whether the conditional use permit for the RV park should be granted.

C. Blue Verbrugge Family Farms, LLC v. Hamilton County Board of Supervisors as Trustees of Drainage District No. 71
Iowa Court of Appeals No. 22-1797. Filed March 27, 2024

The Hamilton County Board of Supervisors were the trustees of Drainage District No. 71. Drainage District No. 71 was established in 1908 and contains 10,375 acres of land. It was originally formed to drain Mud Lake, which no longer exists. DD71 contains a main open ditch and 7 lateral branches. The drainage ditches are used for watersheds by landowners within the drainage district.

In 2019, a landowner within DD71 petitioned the Board to investigate the need to clean out the main open ditch. The Board appointed an engineering firm, and a particular engineer named Jacob Hagen who determined the repairs to the drainage system would cost approximately $2,457,800. The report recommended the annexation of additional land into DD71. Hagen certified an annexation report which recommended the annexation of another 30,538 acres into DD71. At a public hearing held on May 2, 2021, several landowners filed written objections to the proposed annexation. Additional objections were heard at the hearing. In the meantime, the landowners retained an engineer, a Mr. Gallentine, to evaluate the proposed annexation. His findings recommended that the proposed annexation be rejected because the land would not receive a material benefit from inclusion in DD71.

The Board approved the proposed annexation and 125 plus landowners appealed. Following a three-day trial, the court determined that Hagen's annexation report did not meet the requirements of Iowa Code §468.119 (2021) because it did not specify the material benefit received by the land sought to be annexed. The Court concluded that none of the Plaintiffs' lands are materially benefited by DD71's facilities and therefore may not be annexed into DD71 under the applicable statutory framework. The District Court reversed the Board's decision and vacated the annexation of the property. The Board now appeals that decision.

The case was tried in equity and a review of equity cases is de novo. In equity cases, especially when considering the credibility of witnesses, the Court gives weight to the fact findings of the District Court but is not bound by them. The issue in this case is whether the annexation report complied with Iowa Code §468.119 which must specify the character of the benefits received and that the benefits must be material. The report by Hagen did not indicate the material benefits to each landowner by inclusion in the drainage district but only that it would generally benefit the area because of the way the water naturally flowed. The Court of Appeals found that the Board showed some benefit to the landowners, but it has not met its burden of proof to show a material benefit – that is, it has not shown the improvements to the quality of the soil of the landowners in the proposed annexation area is better based upon the drainage into the drainage ditch. The Court of Appeals therefore affirmed the decision of the District Court.

D. Vaudt v. Wells Fargo Bank, et al.
Iowa Supreme Court No. 23-0482. Filed March 8, 2024

The Vaudts own property in West Des Moines, Iowa. They purchased the property in August of 1991. Approximately 23 years ago, the Vaudts cultivated a landscape barrier along the east border of their property that is marked by trees, bushes and mulch. The Enamorados purchased the neighboring property in May of 2021 and had the property surveyed in July with the intention of installing a swimming pool and a fence. When they received the survey results, they discovered the landscaped area bordering the Vaudts' property was encroaching onto their property. Based on those results, the Enamorados disputed the landscaped area as beyond the true western boundary line, and the Vaudts filed their petition to quiet title on June 27, 2022. Count I alleged a claim of boundary by acquiescence and Count II brought an action for adverse possession. The District Court relied upon the decision of *Heer v. Thola*, 613 N.W.2d 658, which held that the one-year statute of limitations in 614.15(5)(b) applicable to a trustee's deed barred a boundary-by-acquiescence claim as well as the claim for adverse possession. On appeal, the Vaudts asked to overrule *Heer* because its interpretation of Section 614.14(5) constitutes manifest error. Wells Fargo who is the lender on the Enamorados' property urged the Court to reaffirm *Heer* asserting that the general assembly intended to provide special protection to property transferred from a trust. Iowa Code §614.15(b) provides, in part, as follows:

> "An action based upon an adverse claim arising on or after January 1, 2009, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise."

The statute in question is directed at actions based upon adverse claims arising on or after January 1, 2009, by reason of a transfer of an interest in real estate by a trustee. The *Heer* decision determined that that section of the code was appliable to a claim for boundary-by-acquiescence. The Iowa Supreme Court held that special treatment afforded by this particular section of the Iowa Code does not mean the statute of limitation in subsection (5) is a title-clearing statute barring all prior claims against the property. It was a question of whether or not overruling *Heer* would cause an issue regarding stare decisis, suggesting that the Court limit *Heer's* application to boundary-by-acquiescence claims and allow only the Vaudts' claim for adverse possession to proceed. The Iowa Supreme Court overruled *Heer* to the extent it held the statute of limitations in Iowa Code Section 614.14(5)(b) applies to claims like the Vaudts which arise from events unrelated to the neighboring property's transfer by trustee's deed.

The Supreme Court held that that section was only applicable to issues regarding the transfer of the property by a trustee's deed. These issues would be related to the authority of the trustee, whether the trustee was appointed properly, and other issues regarding the actual transfer of the deed by a trustee's deed. There was a dissent filed by

Justice McDonald who concurred in part and dissented in part. He felt that because of stare decisis they could not overrule *Heer* and therefore *Heer*'s decision regarding the applicability of Iowa Code Section 614.15(1) was applicable to the claim of the Vaudt's boundaries by acquiescence claim. However, he believed that the claim by the Vaudts based upon adverse possession could proceed and it would not be barred by Iowa Code Section 614.14(5)(b).

E. Lime Lounge, LLC v. City of Des Moines, Iowa
Iowa Supreme Court No. 22-0473. Filed March 22, 2024

This case deals with a liquor license issued to the Lime Lounge by the State of Iowa. The City of Des Moines provided the Lounge with a conditional use permit for a bar in the East Village. That conditional use permit was revoked by the City of Des Moines and the City asked the state to revoke the liquor license of Lime Lounge, LLC. The bar challenged the ordinance arguing it was preempted by Iowa Code chapter 123 and also that the enforcement of the ordinance violated the equal protection and spot zoning prohibitions. The Iowa District Court as well as the Iowa Court of Appeals and the Iowa Supreme Court determined the bar's challenges to the CUP ordinance lacked merit. Iowa Code §123 allows municipalities to regulate bars through zoning, noise restrictions and other health and safety measures within their local police power. The Des Moines CUP ordinance is not preempted by state law and it easily survives the bar's constitutional challenge under rational basis review. The city did not engage in illegal spot zoning. The Iowa Supreme Court therefore affirmed the decision of the Iowa Court of Appeals as well as the Iowa District Court. Lime Lounge, LLC is located in the East Village. They had obtained their liquor license along with a conditional use permit from the City of Des Moines. The conditional use permit regulated certain aspects of a bar, including noise, parking and other uses that are specific to a bar. The lounge had issues regarding the noise that emanated from the patio. The Zoning Board of Adjustments voted to revoke Lime Lounge's CUP. The City then filed a complaint with the Alcohol and Beverage Division of the State of Iowa seeking to revoke Lime Lounge's liquor license pursuant to Iowa Code §123.39 because Lime Lounge did not meet the City's zoning ordinance which requires a valid CUP. Lime Lounge then filed this declaratory judgment action in district court alleging that the City's CUP requirement runs contrary to the regulatory scheme enacted by the Iowa legislature governing distribution of liquor license and is preempted by state statute. A temporary injunction was issued. At trial the District Court determined that Iowa Code §123 does not preempt the City's ordinance to validly regulate the premises of liquor control licensed establishments in Des Moines to ensure premises where alcoholic beverages are served are safe and proper. The District Court also determined that the ordinance did not violate the equal protection clause of the United States and Iowa Constitutions. Lime Lounge LLC failed to prove any type of illegal spot zoning. The Iowa Court of Appeals as well as the Iowa Supreme Court agreed with analysis of the District Court and rejected the assertions of Lime Lounge, LLC.

F. Sheetz v. County of El Dorado
601 U.S._____, 2024

In April of 2024, the United States Supreme Court decided *Sheetz v. County of El Dorado*, holding that legislative imposed fees on development are subject to the same constitutional scrutiny as fees imposed by administrative bodies. George Sheetz applied for a permit to build a manufactured home. The county conditioned the permit on payment of a $23,420 traffic impact fee. The fees were not individually negotiated, and it was derived from a rate schedule legislative enacted by the County's elected Board of Supervisors. *Sheetz* paid the fee under protest and when the County ignored his request for refund, he brought suit containing that the fee was invalid under *Nollan* and *Dolan* because the fee was not roughly proportional to the impact of his proposed home on traffic. The California Court dismissed the challenge concluding that *Nollan* and *Dolan* did not apply to legislative imposed fees. In reversing, the U.S. Supreme Court in an opinion by Justice Barrett, held that there was no basis for affording property rights less protection in the hands of legislators than administrators. The Takings Clause applies equally to both – which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits. The Supreme Court refrained from deciding whether scrutiny of legislatively imposed exemptions must be tailored with the same degree of specificity as permit condition that targets a particular development.

The line of U.S. Supreme Court cases from *Nollan* through *Sheetz* is designed to restrain government from imposing conditions on developers when those conditions are not justified.

G. Conservatorship of Janice Geerdes by Laura Jenkins Conservator v. Albert Gomez Cruz
Iowa Supreme Court No. 22-1905. Filed May 17, 2024

Janice Geerdes owned farmland in Kossuth County with her husband, Marlin. Marlin passed away in 1999. Prior to his death, Janice and Marlin were friends with Albert Cruz who had worked on their farm and had rented a house from them. Over the years, Albert and Janice became good friends. They started a pork operation called Blue Acres Pork on one of the farms. Janice conveyed one-half interest in approximately nine acres to Albert for the operation of the hog facility. This event occurred in 2004. Thereafter, Janice and Cruz continued to be good friends and in 2019 Janice executed a quit claim deed to Cruz conveying the remaining interest in the nine-acre hog site parcel to Cruz for no consideration. Prior to the execution of this deed, Janice had certain cognitive tests completed which indicated she may have dementia. The deed was executed in front of Janice's accountant and was prepared by an attorney. After the deed had been executed by Janice to Albert a conservatorship and guardianship was set up with Laura Jenkins serving as a conservator. Laura then brought this action challenging the validity of the quit claim deed based upon undue influence and lack of capacity. After a bench trial the District Court set the deed aside finding there as undue influence in confidential relationship and even if no undue influence, the woman lacked necessary capacity to deed

her interest in the land. The Court of Appeals in a 2-1 decision affirmed on the basis of lack of capacity. The Supreme Court went through an analysis of the requirements to show undue influence and lack of capacity. To show undue influence, four elements are necessary. (1) the Grantor must be susceptible to undue influence; (2) there was an opportunity to exercise such influence and effect the wrongful purpose; (3) a disposition 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. Once undue influence is shown, which must be by clear, convincing and satisfactory evidence, the burden of proof then shifts to the party alleged to have committed the undue influence to show otherwise. Here, the Court went through an extensive analysis of cases, and they determined that, in this case, the evidence was not clear and convincing to establish undue influence.

On the issue of lack of capacity, the Court found to establish lack of capacity the burden is upon the Plaintiffs to establish by clear, satisfactory and convincing testimony that the Grantor, at the time he executed the deed, did not understand in any reasonable manner the nature of the particular transaction in which he was engaged and the consequences and effects upon his rights and interests. The mere fact that she had cognitive tests that showed some issues regarding her mental weakness, mere mental weakness in a Grantor would not invalidate a deed. To have that effect, the mental powers must be so far deteriorated or destroyed that the Grantor is incapable of understanding the nature and consequences of the instrument he or she executes. Here, the Court found there was not clear and convincing evidence established to show that she lacked mental capacity, and the decision of the Court of Appeals and District Court were reversed. The case was remanded to the District Court.

H. Mitch Robeoltman and Sabrina Risley v. Timothy Hartkopp

Iowa Court of Appeals No. 23-1513. Filed May 22, 2024

In this case, Mitch Robeoltman and Sabrina Risley purchased a 71-year-old house from Timothy Hartkopp. Hartkopp was not the original owner of the home but was a person who flipped houses - meaning he intended to update the house and then resell it for a profit. On the seller's disclosure statement required by Iowa Code §558A, he stated that the heating system and central cooling system had no known problems and had been replaced roughly one month before the sale. He also wrote that the refrigerator that was included in the sale was working and was included in the sale of the property. The standard purchase agreement had a provision that allowed the buyers to inspect the property. They elected not to inspect, and the agreement stated if they did not do so, they agreed to accept the property in its present condition.

After the sale had been completed, Robeoltman and Risley discovered that the heating, ventilation and air conditioning system was faulty. To repair the system, it cost them approximately $5,000. They also found that the refrigerator was not working, Hartkopp replaced the refrigerator, but they felt the refrigerator replacement was not the same type as was originally sold to them, and they had it replaced for the sum of $4,000.

Hartkopp refused to cover the cost of the HVAC repairs or the refrigerator. Robeoltman and Risley brough this action against Hartkopp alleging multiple claims including a breach of the implied warranty of workmanlike construction and a failure to disclose defects. The District Court dismissed the case finding that the theory of implied warranty of workmanlike construction only applied to a builder vendor and not to an individual that sold a property. The Court also found that there was no evidence shown that Mr. Hartkopp had reason to believe that the HVAC system was not working properly, or the refrigerator was not working properly. Robeoltman and Risley appealed. The Iowa Court of Appeals affirmed the District Court's finding that the implied warranty of workmanlike construction was only applicable to a builder vendor. The Supreme Court has extended the implied warranty of workmanlike construction to cover claims of third-party purchasers against the builder, but it declined to extend the implied warranty of workmanlike construction to non-builder vendors. The issue of failure to disclose defects was not proven by Robeoltman and Risley and that they failed to show any knowledge on the part of Hartkopp as to the defects in the HVAC system or the refrigerator. Case law has indicated that the transferor shall not be liable for any error, inaccuracy or omission and the information required in a disclosure statement unless that person has actual knowledge of the inaccuracy or fails to exercise ordinary care in obtaining the information. The District Court's decision was affirmed.

I. Carter v. Fricke

Iowa Court of Appeals No. 23-0612. Filed May 22, 2024

Carter owned certain property in the town of Melrose, Iowa. Carter owned Lot 1 and his neighbors, the Wilcoxons owned Lots 2 and 3. Subsequent to the death of the Wilcoxons, Lot 3 was conveyed by their daughter to the Frickes. Carter brought this action alleging that he owned the property by adverse possession. The District Court, after reviewing the evidence, found that Carter had not shown by clear and positive proof of hostile, exclusive possession of Lot 3 for 10 years and dismissed the petition of Carter. Carter was unsure as to when he improved the property over the years and started paying taxes. Carter eventually acted as sole possessor of Lot 3 – accumulating property, housing horses, paying taxes, and maintaining the land – but the Court could not find proof of 10 straight years of hostile, exclusive possession. The Iowa Court of Appeals indicated law favors regular title and Carter has not shown clear and positive proof of hostile, exclusive possession of Lot 3 for 10 years. Therefore, they affirmed the District Court's judgment that the Frickes are the sole lawful owners of Lot 3 and its dismissal of Carter's trespass claim.

Acquiring ownership by adverse possession is difficult with usually no equities in favor of one who claims property of another by adverse possession and his acts are to be strictly construed. To prevail, an aspiring owner must show "hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least 10 years. The Court found that inferences are not enough and there has to be clear and positive proof.

In this case, under the heavy burden of proof of adverse possession the Court did not find clear and positive evidence to support 10 continuous years of hostile possession and therefore ruled in favor of the Frickes.

J. Rivera v. Clear Channel Outdoor, LLC, et al.
Iowa Supreme Court No. 23-0679. Filed June 7, 2024

Rivera purchased certain property on contract from an entity known as On the Wall Painting, Inc. The date of the contract was February 11, 2008, and the contract was recorded on February 20, 2008. On February 11 or February 12, 2008, On the Wall granted a billboard easement to Clear Channel. This grant occurred through the execution of a document entitled "Grant of Perpetual Easements and Declaration of Restrictions" which will be referred to simply as "the easement." The easement purports to grant "a perpetual, exclusive easement." for construction, maintenance, repair, operation, illumination, and use of "outdoor advertising sign structures: and related equipment "over, under, upon and across" portions of the parcel. The easement was recorded on February 20, 2008.

On February 11, 2008, On the Wall's president executed an "affidavit of possession." Rivera brought this action to quiet the title to the property to eliminate Clear Channel's interest in the property. The District Court relying upon Iowa Code §614.17A granted a Moton for Summary Judgment for the holders of the easement based upon the one limitation provisions – that of §614.17A. It also raised other alternative arguments under §614.1(4) and §614.(5).

The Iowa Supreme Court went through an analysis of Iowa Code §614.17A and determined that this section of the code could only be used by the holder of the record title to the real estate in possession. They went on to determine that an easement holder is not an individual who is in possession of the property. An easement is an interest in land which entitles the owner of the easement to use or enjoy land in the possession of another. The Court went on to say the most recent Restatement of Property says that "an easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the users authorized by the easement."

The holder of the easement tried to argue that because it was such a large structure on the property being a billboard, that the billboard amounts to possession under every sense of the word. The Iowa Supreme Court disagreed holding that an easement is a nonpossessory interest in the property and could not be utilized as a holder of record title in possession that could use §614.17A to cut off other interests in the property. The case was reversed and remanded to the district court for further proceedings.

K. Sundance Land Company, LLC v. Phillip Remmark and Bobbie Remmark
Iowa Supreme Court No. 22-0848. Filed June 14, 2024

This is a case of first impression by the Iowa Supreme Court. The Court states that good fences make good neighbors. Sometimes they make good boundaries as well. Under Iowa law when neighbors have treated a fence or other marker as a dividing line between their respective properties for 10 consecutive years, or even if the legal line of demarcation is located elsewhere, either of them can go to court to seek a judicial decree that a boundary by acquiescence has been established. But what if the properties are acquired by the same owner before anyone has gone to Court? Does that mean that the process of recognizing some boundary other than the legal one has to start over if the properties later go back into separate ownership? After all, when there is only one owner of the two properties, there is no need to recognize a boundary. No one is their own neighbor. The Iowa Supreme Court joined with other jurisdictions in holding that a boundary by acquiescence determination contemplates the properties have been in separate ownership during the required 10-year period leading up to the present controversy. This rule is consistent with the texts of Iowa Code §650 and it is generally the reasonable and fair outcome. The Supreme Court disagreed with the reasoning of the lower courts that allow a party to seize upon any past tenured period of de facto boundary recognition by two neighbors, regardless of intervening events, and have that boundary declare the actual boundary line. The Iowa Supreme Court held that boundary by acquiescence is not self-executing.

In this particular case, there were two parcels of property in Wapello County. The north property was approximately 80 acres. The south property was approximately 60 acres. Access to both properties is from Lake Road, which lies to the east and runs north and south. The county at one time had an easement for roads that ran west from Lake Road. The road's east-west path ran slightly north of the legal boundary between the two properties. At some time, a fence was put up along the north edge of the right of way for the road. There are rows of trees on either side, and it was not clear when the old road ceased to exist, but the county abandoned the easement in 1980. The two parcels were owned separately for many years with both parties recognizing the fence line as the boundary between the two properties. Eventually, both properties became owned by Scott Hubbell in 2014. In 2014 he acquired both properties. In 2014 or 2015 Scott Hubbell installed a grain bin south of the old fence line. Again, he believed this was on the south property. However, Hubbell was not concerned about the boundary line as he owned both parcels. He also installed a shed on the south property that he believed was on the south property line, but it was not. The Remmarks' purchased the south property in April of 2017 and Sundance purchased the north property in September of 2018. Sundance, prior to the purchase of the property, had a survey done which revealed that the actual legal boundary of the north property was south of the fence line and included part of the area where the machine shed, and the grain bin existed. Sundance went ahead and purchased the property believing that the two parties could reach an agreement over the boundary dispute. This did not occur, and Sundance filed a Petition seeking the Court to quiet title according to the property lines surveyed alleging that the Remmarks' were trespassing on the north property and requesting a temporary injunction against the Remmarks' entry on

the north property. The Remmarks filed a counterclaim asserting boundary by acquiescence. The trial was a bench trial, and the District Court concluded that a boundary line by acquiescence had been established by the old fence line. The District Court also held that common ownership did not eradicate a boundary by acquiescence once it had been recognized by the parties.

The Iowa Supreme Court had to decide whether common ownership of two properties where there had been a previous boundary by acquiescence destroy the boundary by acquiescence and require that a new period of time be started to have a boundary by acquiescence agreement. The Court relied upon a case from Colorado entitled *Salazar v. Terry*, 911 P.2d 1086 (Colo. 1996) that common ownership of a parcel will destroy any boundary by acquiescence that had previously been established and where the 10-year period had been completed. In Colorado it was 20 years. The Colorado Supreme Court relied on the doctrine of merger of easements where if a party owns two properties where there had previously been easements granting access or other types of easements, those easements would be merged into the title and the easements would no longer exist. The Iowa Supreme Court held, in this case, that common ownership eradicates potentially acquiesced boundaries between the two properties other than the legally established ones. There was a strong dissent by Justice Oxley.

L. Rochon Corporation of Iowa, Inc. n/k/a Graphite Construction Group, Inc. v. Des Moines Area Community College
Iowa Supreme Court No. 22-2098. Filed November 22, 2024

Iowa Code §573 regulates contracts for the construction of public improvements. The requirements are aimed at assuring that public construction projects get completed and that contractors and subcontractors get paid. Des Moines Area Community College (DMACC) hired Graphite Construction Group, Inc. to complete a project on one of their campuses. The project commenced and the contractor was paid progress payments throughout the project. Iowa Code §573.13 requires that the public entity retain certain amounts of money from each progress payment to assure that the work will be completed and paid for after it has been accepted by the public entity. Iowa Code §573.13.

This dispute centers around when the contractor can receive the retainage which remains after the project is completed. The contractor claims that it is entitled to retainage now even though the construction project has not yet been completed. DMACC contends that the retainage is not payable until the project has been completed and there has been a final acceptance of the project by DMACC. The Iowa District Court agreed with DMACC. The Iowa Court of Appeals reversed and agreed with Graphite and the Iowa Supreme Court agreed with the interpretation of the District Court finding that except in very limited circumstances that are specified in the statutory text, Chapter 573 does not allow the contractor to obtain the retainage before the completion and final acceptance of the project. Iowa Code §573.14(1).

In this particular case, the project progressed as planned. Progress payments were made as required and DMACC retained 5% of each progress payment as its retainage. By

January of 2022, the project was approaching completion. On January 4, 2022, Graphite made its twenty-ninth application for payment. This was the final invoice, and it requested final payment under the contract. By that time, all that was left under the contract was the retainage which amounted to about $510,000. However, at the time of their final payment application, the project was not yet completed. A punch list of the incomplete work had not even been created and the architect declined to approve Graphite's request for the payment out of the retainage.

Meanwhile, a dispute arose between Graphite and Metro Concrete, Inc a subcontractor. Metro Concrete, Inc. argued that they were still owed $212,000 for unpaid services. In late January, Metro filed a claim "Under Provisions of Chapter 573 Iowa Code" against Graphite and DMACC. Then in March, Graphite served a demand on Metro to file suit. Metro obliged by filing the current suit, in which Metro seeks payment for its unpaid services. Metro named DMACC and Graphite as defendants. Graphite filed a bond for twice the amount of the claim of Metro and demanded from DMACC that the retainage in the amount of $510,000 be disbursed to Graphite. DMACC resisted this request maintaining that the project was not yet completed and therefore Graphite was not yet entitled to the requested retainage. Graphite also asked for attorney's fees which are allowed under the statute for the prevailing party.

The District Court denied Graphite's request relying on the plain language of Section 573.16. The District Court concluded that DMACC could not be obligated to release the retainage to Graphite prior to "final completion and acceptance of the project." Because the project was not completed the Court rejected Graphite's retainage claim and found that because they were not the prevailing party no attorney's fees would be ordered. This appeal then ensued, and the Supreme Court transferred the case to the Court of Appeals which agreed with Graphite and concluded that the retainage amount could be released but denied the request for attorney's fees by Graphite.

Iowa Code §573 requires that a general contractor first provide a performance bond to ensure "faithful performance for the contract" and "fulfillment of other requirements as provided by law." Second, Iowa Code §573 requires retainage procedures. This procedure requires that the public entity retain up to 5% of each progress payments to put in a retainage account. The retainage constitutes a fund for the "payment of claims for materials furnished and labor performed on" the project. The retainage fund must be "held and disposed of by the public entity as provided in" Chapter 573. Iowa Code §573 is clear that as a general matter the fund must be retained by the public entity for a period of no less than "30 days after the completion and final acceptance of the improvement." If after 30 days there is no claim filed on the fund, then the funds can be released. If, however, there is a claim on the funds, the public entity must retain the funds for an additional 30 days to see if one of the individuals who are making the claim file suits. If they do not, then they are prohibited from claiming any amounts against the project as a subcontractor. There are two exceptions to this requirement to hold the retainage until final acceptance and completion. Those two exceptions were not applicable in this situation.

The Iowa Supreme Court believed the contractor was taking provisions under 573.16 out of context. Under 573.16 it does provide that upon written demand of the contractor served, in the manner prescribed for original notices, the person filing the claim, requiring the claimant to commence action court to enforce the claim must be commenced within 30 days, otherwise the retained funds will be released to the contractor. After the action is commenced, upon the general contractor filing with the public corporation or person withholding the funds, a surety bond in double the amount of the claim in controversy, the public corporation or person shall pay to the contractor the amount of funds withheld. However, the Supreme Court disagreed with that interpretation finding that Graphite took the language out of context. The Supreme Court held that because 573 makes it clear the retainage cannot be released before 30 days after the completion and final acceptance of the project, the argument of Graphite failed.

The Supreme Court vacated the Court of Appeals' decision and affirmed the District Court on the issue of retainage. The Supreme Court also held no attorney's fees were paid to Graphite.

M. South-Central Iowa Landfill Agency v. Elliott J. Corwin et al.
Iowa Court of Appeals No. 23-1232. Filed November 13, 2024

This case deals with issues regarding the applicability of Iowa Code §614.14(5), one-year statute of limitations relating to a trust, as well as the doctrine of adverse possession. There was a dispute between the South-Central Iowa Landfill Agency (SCILA) and the Corwins. SCILA owned the majority of the property surrounding the Corwin parcel. There was a disputed parcel that the Corwins received from a trust in 2019. SCILA argued that they had received title to this property back in 1980. There was an issue regarding the legal description used on the deed conveying the property to SCILA. SCILA utilized this property since the 1980s and when the Corwins purchased the property from a trust that asserted some ownership interest in the disputed parcel, SCILA brought this action to quiet the title of the disputed parcel. The two arguments asserted by the Corwins were the fact that the property had been conveyed to them by a trust and Iowa Code §614.14(5)(b) was applicable. That section has a one-year statute of limitations for any attempt to invalidate the trustee's deed. The District Court as well as the Iowa Court of Appeals relied upon the *Vaudt* court's decision from 2024 *Vaudt v. Wells Fargo Bank, N.A.* 4 N.W.3d 45,54-55 which stated that section only applies to claims for which the act of recording the trustee's deed is essential for the claim to accrue. This case overruled the *Heer* case which is relied on heavily by the Corwins in supporting their statute of limitations claim. The *Vaudt* case stated that 614.14(5)(b) does not apply to either boundary by acquiescence or adverse possession. The other argument asserted by SCILA was that they claimed ownership by adverse possession. The court noted that courts do not favor title to adverse possession. The law presumes possession of land is under regular title. The court went on to say that "a party claiming title by adverse possession must establish hostile, actual, open, exclusive and continuous possession, under claim of right or color of title for at least 10 years." These elements require clear and positive evidence. Evidence offered to prove the doctrine will be strictly construed

in this particular case, SCILA had operated their landfill operation on the property in dispute as well as other property since the 1980s. They maintain monitoring wells on the property. They used the disputed property, and the evidence supported finding that SCILA had conducted continuous actual landfill management operations on the disputed property for an uninterrupted period of more than 10 years in a manner consistent with what owners of similar property would exercise. The evidence also showed that SCILA had a claim of right which was clearly indicated because the claimant believed itself to be the true property owner. Until the trust brought its intended sale to SCILA's attention in 2019, no other party ever disputed that SCILA was the true title holder. The tax history creates no conflict with this conclusion. Although SCILA has never paid property taxes on the disputed parcel because of its tax-exempt status, the property taxes were nonetheless assessed to SCILA from 2014 to 2021. The Iowa Court of Appeals affirmed the District Court finding that the action of SCILA to quiet the title was not barred by the statute of limitations in §614.14(5)(b) and SCILA proved ownership of the disputed parcel by adverse possession.

N. Wohloa, Inc. v. The Lake Cabin, LLC

Iowa Court of Appeals No. 23-1557. Filed August 7, 2024

This case deals with the applicability of Iowa Code §614.24 and agreements made by homeowners for financial obligations of an association. In 1970 the West Okoboji Harbor was developed. This development transformed a marshy area into a manmade canal system called West Lake Okoboji Harbor. The harbor connected the land to West Lake, creating waterfront lots out of ordinally inland property. On the other side of the harbor were properties that already abutted West Lake and did not require the harbor for lake water access. The Lake Cabin property was already abutting the lake at the time of the plat. The 1970 plat subdivided both harbor and lakefront land into lots, established restrictive covenants, and created a "Lot Owners Association." The Lot Owners Association bylaws required that a titleholder upon acceptance of the deed agreed "to become subject to the provisions and such other rules and regulations of the Association as may be established." So, by accepting a deed to this property they assented to the terms of the Association and the requirement to pay assessments. The individuals who are members of Lake Cabin, LLC were children of the original owners of the property who acquired the property in 1987. Throughout the time that they owned the property, they paid their assessments as required by the Association.

In 2005, the Association became aware that the restrictive covenants for the development had expired under Iowa Code §614.24. The Association chose to have the Dickinson County zoning board place an overlay district over the property instead of trying to renew the covenants.

Lake Cabin, LLC continued to pay the assessments. The Association in 2020 approved obtaining a large loan for the purposes of repairing and maintaining the canal system. Assessments were to be made to all lot owners. When the Dougherty's' children learned of this assessment they had their attorney send a letter to the Association stating

that the "Doughertys should not have to pay any assessment for the Harber/Sea Wall" as their lot does not abut the seawall but was a lot on the lake. They argued that the restrictive covenants had expired and therefore they were not a part of the overlay district and should not have to pay the assessment. The District Court, after a two-day nonjury trial, determined that Lake Cabin must pay dues and assessments to WOHLOA because they were not considered "use restrictions" subject to expiration. It also concluded that Lake Cabin is barred from resigning from the organization based upon implied practices and its acceptance of the property deed. The Court also awarded attorney's fees to WOHLOA against Lake Cabin.

The issue before the Iowa Court of Appeals was whether Lake Cabin is obligated to pay WOHLOA dues and assessments. WOHLOA contends it does not have to pay those assessments because the covenants expired. They had resigned from membership in WOHLOA or its predecessor, the Association. The Court looked at Iowa Code §614.24 which provides that no action based upon a claim arising out of a restrictive covenant against the holder of record title to such real estate in possession after 21 years from the recording of such deed may be maintained. However, the Iowa Legislature amended that statute to provide Iowa Code §614.24 was not applicable in certain situations. The first amendment provided as follows:

> "An agreement between two or more parcel owners providing for the sharing of costs and other obligations . . . for maintenance, repair, improvements, services, or other costs related to two or more parcels of real estate regardless of whether the parties to the agreement are owners of individual lots or incorporated or unincorporated lots or have ownership interests in common areas in a horizontal property regime or residential housing development"
>
> It was further amended to provide:
>
> "An agreement between two or more parcel owners for the joint use and maintenance of driveways, party walls, landscaping, fences, wells, roads, common areas, waterways, or bodies of water."

Iowa Code §614.24(5)(b)

Lake Cabin tried to argue that this section could not be applied retroactively. The Court determined that the issue here was not restrictions on land usage but simply a financial obligation. The Court found that assessments are merely obligations to pay money. There are no type of use restrictions on the property and therefore it is not subject to Iowa Code §614.24. The exceptions to §614.24 are aimed primarily at party wall agreements or other agreements between two or more parties who are trying to maintain the property.

The Court also found that because the Association bylaws, which were part of the abstract to the property, provided for automatic transfer of membership with the transfer

of the properties the acceptance of the deed was an agreement to be a member of the association and the obligation to pay dues as an owner of the property. The Court found that Lake Cabin assented to the Association's reach by accepting its deed. The Iowa Court of Appeals affirmed the District Court finding that the relevant restrictive covenants have not expired as to the financial obligations of the owner of the property to the Association and Lake Cabin was responsible for its membership and financial obligations in WOHLOA. The Court also awarded attorney's fees to WOHLOA in the amount of $9,280 based upon language contained in amendments to association documents. The final disposition by the Court stated that because Lake Cabin's financial obligations are not use restrictions they have have not expired by operation of law. Lake Cabin is responsible for the membership and financial obligations to WOHLOA.

O. City of Donnellson, Iowa v. Julie Walljasper
Iowa Court of Appeals No. 23-1261. Filed September 4, 2024

This matter involves the City of Donnellson, Iowa, utilizing Iowa Code §657A.10B to obtain title to a derelict house. The District Court held the house was abandoned and transferred title to the city. The homeowner appealed. The evidence in this case shows that the house was vacant, continued to deteriorate and was unfit for human occupation. The homeowner did make some improvements during the 60 days after the action commenced but she only took some meaningful steps after the petition was filed. The Court found that those eleventh-hour fixes were not enough to abate the house's dilapidated condition. In this case, Walljasper bought the house in October of 1990. Two decades later in 2014, she asked the city to turn off water service to the house. She had not put trash out in over a year. The house had no active water, sewer or other services. No one had lived in the house for at least a decade. There were issues with the house including sewage backup, collapsing porch, and unkept brush in the backyard. The city notified her on numerous occasions to get the house up to code. They gave her several notices indicating that if she did not, they would proceed under Iowa Code §657 to obtain title to the property. After having given her several notices and orders to obey violations the Court petitioned to take title of the house under Iowa Code §657A.10B. This section authorizes municipalities to seek title to abandoned property. The Court found that the house had been abandoned and ordered the title to be transferred to the city. The Court went through an analysis of Iowa Code §657A.10B and found that this is an action of "a final resort against those property owners who have otherwise failed to comply with housing codes, building codes, nuisance laws or tax assessments when less drastic steps toward compliance have failed." Once a municipality petitions to obtain title to an allegedly abandoned building, the property owner has sixty days to make good-faith efforts to cure the defects. In this case, the homeowner did make some minor repairs to the house after the petition had been filed but in this case the Court still found that the property had been abandoned. The issues to consider as to whether or not a house is abandoned under Iowa Code §657A.1 are: (1) whether property taxes have been paid; (2) if the house has utilities; (3) whether the house is occupied; (4) whether the house satisfies the City's housing and building codes; (5) if the house's exposure to the elements has caused deterioration; (6) whether the house is "boarded up"; (7) any past efforts to

rehabilitate the house; (8) any good-faith efforts "to restore the property to productive use"; (9) whether vermin, debris, or "uncut vegetation" are present; (10) if the City has maintained the house; (11) whether prior orders from local officials were followed; and (12) any other relevant evidence. In this case, the owner was current on her property taxes but the property did not have water, sewar or garbage collection. The Court found that the owner's minimal prior rehabilitative efforts and history of noncompliance with the City notices were insufficient and therefore they found the property was abandoned for purposes of Iowa Code §657A. Title was transferred to the city.

P. Brendeland v. Iowa Department of Transportation
Iowa Supreme Court No. 23-1356. Filed November 22, 2024

The Brendelands owned property on US Highway 210 near Huxley. The Iowa Department of Transportation was in the process of working on the intersection between 210 and I-35. The DOT wanted to acquire a strip of land along the highway that would enable them to continue with the work on the interchange. Brendelands wanted to be able to install a commercial entrance to the highway because they had potential interest by a convenience store operator for their property that was adjacent to Highway 210 and the interstate. On January 29, 2023, the DOT formally served the landowners with a notice that indicated the DOT would be taking all rights of direct access between their property and Highway 210. Then on February 21 a DOT employee verbally told one of the landowners that commercial access from their property to the highway would not be allowed. On March 20 and May 2, the landowners filed actions based upon common law in the District Court challenging the condemnation. At the District Court level, the Court dismissed the landowner's actions as untimely given the 30-day deadline for bringing an action challenging the exercise of eminent domain authority or the condemnation proceedings as set forth in Iowa Code §6A.24(1) (2023). There was also another deadline that the Brendelands missed, that was a 30-day deadline in Iowa Rule of Appellate Procedure 6.101(1)(b) (2023) for the landowners to file a notice of appeal. The landowners wanted to appeal the decision of the District Court, but they did not file their notice of appeal in District Court until 57 days after the dismissal order, even though they filed it in Appellate Court 21 days after the Court's dismissal order and it was immediately served on the DOT. In this action, the landowners ask to be excused from both delays, their delay in filing their notice of appeal in District Court and their prior delay in filing their actions in District Court. The Iowa Supreme Court concluded that the notice of appeal delay is not fatal. Rule 6.101(4) tolls the time for filing a notice of appeal in District Court when the notice is served on time, "provided the notice is filed with the District Court clerk within a reasonable time." The Court found , over a strong dissent, that the 35 days from the service to actual filing is, just barely, a reasonable time.

The Iowa Supreme Court, however, did find that the delay in filing their action challenging the condemnation under Iowa Code §6A.24(1) was fatal. This statute 6A.24(1) employs the mandatory term "shall" and ensures prompt resolution of all condemnation-related disputes other than the amount of money to be paid. Because the landowners missed their 30-day deadline for mounting a District Court challenge, the

Supreme Court affirmed the District Court's dismissal of their case. The Brendelands tried to argue that because their actions challenging the condemnation were based upon common law arguments that they did not have to comply with the 30-day requirement to challenge the condemnation action. The Iowa Supreme Court, reviewing their analysis, found that there was no exception in §6.A.24(1) for common law claims. The Iowa Supreme Court rejected the landowner's argument that they were not subject to the 30-day deadline in §6A.24(1) and affirmed the District Court.

Q. Estates at Woodland Hills, LLC v. Scott Family Properties, LLC
Iowa Court of Appeals No. 23-1639. Filed January 23, 2025

Scott Family Properties, LLC contracted to sell certain real estate to the Estates at Woodland Hills, LLC with a closing date set for November 13, 2020. There was a dispute between the parties as to whether a tenant could remain on the property after closing. The tenant was, in fact, one of the owners of Scott Family Properties, LLC. Three days prior to closing, Woodland Hills offered to push the closing into the spring suggesting the later date would give the tenant more time to relocate and provide better weather to start development. Scott Properties never responded so the closing date came and went. The next business day Scott Properties notified Woodland Hills that failing to close on November 13 voided the contract. Woodland Hills disagreed reaffirming the intent to purchase and requesting a mutually agreeable new closing date. Again, Scott Properties never responded. So Woodland Hills brought this action for specific performance. After a bench trial, the Court found Scott Properties breached the contract and ordered specific performance as well as payment of attorney's fees for Estates at Woodland Hills.

On appeal, Scott Property argues that Woodland Hills repudiated the contract when it offered a new closing date and that Woodland Hills' failure to perform on November 13 relieved Scott Properties of any contract obligations after that date. The Iowa Court of Appeals agreed with the District Court finding that Scott Properties was incorrect on each assertion. Woodland Hills did not repudiate the contract by proposing a new closing date as an option expressly contemplated by the contract and Woodland Hills could not perform on November 13 because Scott Properties failed to provide the information necessary to tender payment or otherwise close. The mutual failure to perform on November 13 kept the contract alive. So, when Scott Properties later refused to perform, it breached the purchase agreement and the Court of Appeals affirmed the District Court and awarded Woodland Hills not only the District Couret fees but also appellate attorney's fees.

The Iowa Court of Appeals found to prevail on a breach of contract claim Woodland Hills must show: (1) a contract existed, (2) the conditions and terms of that contract, (3) it performed "all the terms and conditions required under the contract," (4) Scott Properties breached the contract "in some particular way," and (5) Woodland Hills suffered damages from the breach. The Court found that Woodland Hills performed their part of the contract and Scott Properties did not by refusing to respond to Woodland Hills' request for a new closing date and for information to close the transaction. The Court

found that Scott Properties was in breach not Woodland Hills and awarded specific performance as a remedy to Woodland Hills and the payment of attorney fees.

R. Summit Carbon Solutions, LLC v. Kent Kasischke
Iowa Supreme Court No. 23-1186. Filed November 22, 2024

This case deals with an interpretation of Iowa Code §479B.15. Iowa Code §479B.15 provides as follows:

> "After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land. The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination."

Summit sought access to the land along the proposed route to complete preliminary civil, environmental, archaeological, and soil surveys and investigations. Kasischke denied Summit access to the land. Summit filed a petition for injunctive relief on September 19 and filed an amended petition on October 19, 2022 . Kasischke argued that Summit failed to satisfy the statutory notice requirements and also asserted a facial challenge to Iowa Code §479B.15 arguing that 479B.15 falls within a new category of "per se takings" recognized in *Cedar Point Nursery v. Hassid*, 594 U.S. at 149. The Iowa District Court as well as the Iowa Supreme Court disagreed with that interpretation finding that *Cedar Point Nursery v. Hassid* deals with individuals who gained access to the property not for the purposes of conducting a survey but for union representation. The Iowa Supreme Court found that Iowa law makes clear that the survey access is a long-recognized background restriction on private property, and they found that there was no taking pursuant to the Fifth Amendment to the U.S. Constitution or the Iowa Constitution takings clause Article I, Section 18. The Iowa Supreme Court determined that to find a statute as an unconstitutional taking of property, a three-step test must be applied: (1) Is there a constitutionally protected private property interest at stake? (2) Has this private property interest been 'taken'? and (3) If the protected property interest has been taken, has just compensation been paid?" Relying upon *City of Eagle Grove v. Cahalan Invs., LLC*, 904 N.W.2d 552, 560 (Iowa 2017), the Court noted that Iowa as well as other states have long recognized the right to have statutory access to private property to conduct land surveys. The Iowa Supreme Court held that land surveys allowed in Iowa Code §479B.15 are longstanding background restrictions that permit temporary access onto private without triggering a constitutional taking. Kasischke's facial constitutional challenge failed. The Court also found that Summit was a pipeline company within the meaning of Chapter 479B, that the statutory notice requirements were met, and the Court rejected the

argument that in order for the injunction to be issued there has to be proof of irreparable harm. The decision of the District Court was affirmed.

S. MIMG CLXXII Retreat on 6th, LLC v. Mackenzie Miller and Parties in Possession

Iowa Supreme Court No. 23-0670. Filed January 24, 2025

A landlord in Cedar Rapids owned an apartment building. Mackenzie Miller, a tenant, extended a one-year lease in June of 2022. The lease required rent to be paid by the first of each month with a three-day notice period for nonpayment before the landlord could terminate the tenancy and pursue eviction. In December of 2022, Miller failed to pay her rent, and the landlord served a three-day notice. When the rent remained unpaid, the landlord filed a forcible entry and detainer action in the small claims division of the Linn County District Court. The small claims court dismissed the FED action even though Miller failed to appear ruling that the Federal CARES Act required a 30-day notice before eviction which preempted Iowa's three-day notice law. The landlord appealed to the Iowa District Court for Linn County arguing that the 30-day notice requirement was time limited to the 120-day moratorium period specified in the CARES Act. The District Court upheld the Small Claims Court's decision stating that plain language of the CARES Act did not include an expiration date for the 30-day notice requirement. The Iowa Supreme Court went through an analysis of how courts throughout the country had addressed this issue. Other courts upheld the requirement that a 30-day notice had to be given even though the moratorium had expired. The Iowa Supreme Corut reviewed the case and concluded that the 30-day notice requirement of the CARES Act applies only to rent defaults that occurred during the 120-day moratorium period. The rule must be read in context with the surrounding provisions which were temporary in nature relating to the COVID-19 pandemic. The Court also noted that there is a presumption against preemption of state law by federal law particularly in an area traditionally governed by state law. Here the issue was concerning a landlord-tenant relationship. The Iowa Supreme Court reversed the District Court's decision and remanded the case for further proceedings consistent with its opinion.

T. Sharon Kellogg v. Brian Kellogg, et al.

Iowa Court of Appeals No. 23-1082. Filed December 18, 2024

Sharon Kellogg was married to Bruce Kellogg. Bruce was a member in an LLC known as D & K Ranch, L.C. D & K Ranch L.C. was a limited liability company owned with his brother Larry Kellogg; Larry's son, Brian Kellogg; and their family friend Derek Day. This LLC bought a farm in Chickasaw County several years ago where the group hunted, fished and spent time with their families. There was a cabin on the property, along with two fully stocked ponds, timbers, and cropland, although none of the ground was being farmed because it was enrolled in the Conservation Reserve Program until 2025. The articles of organization, which were filed with the Secretary of State in 2001, provided that the company would dissolve upon the death of one of its members. The articles also

provided that the company would be "managed by the managing member." Larry Kellogg was the managing member. The articles of organization provided as follows:

> "That in the event of the death of one of the parties, or the desire of one of the parties to sell his interest in the subject real estate, that the remaining parties be given the first opportunity to buy the fractional interest of the party who has died or has indicated the desire to sell, at the fractional appraised value, determined as of the date of death or the date the party has given written notice to the remaining parties of his desire to sell. The value shall be determined by either the value of the subject real estate set by the Chickasaw County Assessor or by independent appraisal. Said option shall be exercised within sixty (60) days of death or notice of intent by the party desiring to sell."

Sharon's husband Bruce died. Upon the death of Bruce, the LLC began the process of dissolving the company and winding up its affairs after Bruce's death. In a March 2020 letter, Larry notified Sharon that the company would be dissolved and offered to pay Bruce's estate $65,000 for his membership interest. Sharon refused this offer. So, in April, Larry obtained an appraisal of the farm, which set its estimated value at either $408,000 or $420,000, depending on whether certain acres were designated as wetlands. Larry did not share the appraisal with Sharon although he did show it to Brian and Derek. The next month the LLC sold the farm to Brian for $360,000 and Larry mailed a check to Sharon for $86,465.26 – one fourth of the net proceeds. Included with the check was a copy of the closing statement and articles of dissolution. Sharon returned the check, notifying Larry that if she did not "obtain a deed from Brian to either D & K Ranch, L.C. or to Derek Day, Sharon Kellogg and Larry Kellogg and himself as tenants in common on or before May 15," she would sue to vacate the deed.

In May 2022, Sharon followed through with her suit to vacate the deed conveying the property to Brian, having never cashed the check for one-fourth of the net proceeds. She named in the lawsuit, Brian, Derek, Diane Kellogg (Larry's widow), and the company as defendants as Larry also died. Sharon alleged that Larry "did not follow the procedures established by the Operating Agreement" for the sale of the property and that he "breached his duty to the other members of the limited liability company by selling said property to his son Brian Kellogg." The District Court ruled in favor of LLC. Sharon appealed that ruling claiming (1) there was no "valid basis for substitution" of judges under Iowa Rule of Civil Procedure 1.1802(1) as the judge at the start of the case was not the judge that finished the case and that the court erred in, (2) failing to recognize her "member status as Bruce Kellogg's personal representative" under Iowa Code §489.504, (3) holding that the managing member did not breach his fiduciary duty to her or violate the operating agreement by selling the farm, (4) approving a discounted value for her interest in the company, and (5) failing to consider her oppression claim. The Iowa Court of Appeals affirmed.

The main issue in this case is what was the status of Sharon Kellogg as a deceased member's personal representative in the limited liability company. Section 7.01 of the operating agreement provided as follows:

> "Subject to any restrictions on transferability under applicable law, or contained elsewhere in this Agreement, or in the articles of agreement each Member may assign some or all of the interest of such Member. Such assignee shall become a substituted member ("Substituted Member") in the Limited Liability Company entitled to all the rights and benefits under this Agreement only if all of the Members consent to the assignment in writing or approve of the assignment by a vote taken at a meeting of the Members, which consent or approval may be withheld in the absolute discretion of any of the Members. An assignee who is not a Substituted Member shall only be entitled to the distributions the assignor would be entitled."

This provision follows "one of the most fundamental characteristics of LLC law"—to 'pick your partner' principle." Rev. Unif. Ltd. Liab. Co. Act which Iowa adopted in Iowa Code chapter 489, states "forbid a member from transferring that member's status as a member without the consent from the other members of the company." Also, in Iowa Code §489.504 states that "if a member dies, the deceased member's personal representative may exercise the rights of the transferee provided in §489.502(3) and, for the purposes of settling the estate, the rights of a current member under §489.410.

The Iowa Court of Appeals affirmed the District Court concluding that the District Court did not error in failing to recognize Sharon's member status as Bruce's personal representative under §489.504. She was instead a transferee with limited rights to information from the company.

U. Fink v. Lawson

Iowa Court of Appeals No. 23-1845. Filed February 5, 2025

Donald and Linda Lawson bought their home on Lot 21 of the H.L.C. Second Subdivision Development in 2002 from the Mary L. Becker Trust. Forty-six days prior, the trust received the title to the property from another individual, the son of the trust's co-trustees, who built the home on the property in 1987. The home was vacant when the Lawsons purchased it.

At the time the Lawsons purchased Lot 21, they received a written and signed easement agreement from the Mary L. Becker Trust purporting to grant an easement across neighboring property (Lots 19 and 20) to provide the Lawsons with access to a dock on Lake Delhi. However, the Mary L. Becker Trust did not own Lots 19 and 20. The Larry D. Becker Trust owned those lots. The easement did not describe land that reached the lake. These problems with the easement agreement did not cause any issue for several years as the trust allowed the Lawsons to traverse both Lots 19 and 20 to access

the dock on Lake Delhi for almost two decades along a path that differed from that described in the purported easement agreement.

In 2015, the Larry D. Becker Trust sold Lots 19 and 20 to XL Investments, LLC, a limited lability company whose members were the Beckers' children. Then in 2021, Mark and Kelly Fink purchased Lots 19 and 20 from XL Investments with the intention of building a home on the land. The Finks brought this action to quiet title to Lots 19 and 20 against the Lawsons. Tort claims were also filed. The District Court bifurcated the proceedings, separating the quiet title claim from the tort claims. The Finks filed a motion for summary judgment seeking to dispose of the Lawsons' easement claims asserted as defenses. The district court granted the motion in part and denied it in part.

The Lawsons tried to argue that they had an easement over Lots 19 and 20 to access a dock on the shore of Lake Delhi. The four ways to establish an easement are: (1) by express grant or reservation, (2) by prescription, (3) by necessity, and (4) by implication. The Lawsons contend the District Court should have recognized an easement under multiple theories. The first issue is reformation to establish an express easement. The Lawsons tried to ask for reformation of the express easement to have the correct trust executing the easement agreement back in 2002. The District Court as well as the Iowa Court of Appeals found that that claim cannot succeed. Reformation is only proper after the requesting party has established clear and convincing proof that the reformed agreement would reflect "the agreement of the parties and not make a new agreement." Put another way, reformation is warranted when there is simply a mistake in the expression of an agreement. "Mistake in expression, or integration, occurs when the parties reach an agreement but fail to accurately express it in writing." Here the Lawsons were attempting to reform the agreement to change the parties to the original agreement, not just the terms of the agreement. The Iowa Court of Appeals found that this would create a new easement agreement which is not permissible. Therefore, the Iowa Court of Appeals affirmed the District Court on the Lawsons' request to reform the original easement to change the parties to that agreement.

The second argument was establishing the easement by implication. An easement by implication is one the law imposes by inferring what the parties to a transaction intended that result, although they did not express it. An easement by implication arises under the following conditions:

> (1) a separation of the title; (2) a showing that, before the separation took place, the use giving rise to the easement was so long continued and obvious that it was manifest it was intended to be permanent; (3) it must appear that the easement is continuous rather than temporary, and (4) that it is essential to the beneficial enjoyment of the land granted or retained.

Under the first element that is necessary to establish an easement by implication, there must be "a separation of a title." An entity must first have the unity of ownership of the properties to then be able to separate the tiles. Here, there was no unity of ownership because the Mary L. Becker Trust owned Lot 21 with the Larry D. Becker Trust which

owned Lots 19 and 20 at the time Lawson's purchased Lot 21. This seemingly forecloses Lawson's effort to establish an easement by implication as they cannot establish the first element. However, the Lawsons argued that the Court should adopt the "control test" to find unity of ownership. Under this test, unity of ownership is not examined so literally; instead, it requires the examining court to look at who has actual control over the properties and find unity of ownership when those who have actual control of the properties are the same. The Lawsons argue that both trusts were the same entity and they had control over both parcels. The Court declined to apply the control test because they felt the Lawsons could not establish an easement by implication because the other elements were not apparent. The Court did not adopt the control test.

The next argument that the Lawsons made was that a prescriptive easement had been established on the property. A prescriptive easement is created when a person uses another's land under a claim of right or color of title, openly, notoriously, continuously and hostility for 10 years or more. The District Court seemed to find that there was no hostility in this particular case and ruled that a prescriptive easement was not appropriate. The Iowa Court of Appeals, in reviewing this element of the prescriptive easement reversed the District Court and remanded for further proceedings as the District Court did not go through an extensive analysis of whether a prescriptive easement existed.

The Lawsons then also argued that there should be a modified prescriptive easement. The District Court found that prescriptive easements based on a relaxed standard are determined either on the theory of a valid executed oral agreement or on the principal of estoppel. Under this exception to the strict rules governing prescriptive easements, an easement by prescription may arise in those instances in which the original entry upon the lands of another is under an oral agreement or express consent of the servient owner and the party claiming the easement expends substantial money or labor to promote the claimed use in reliance upon the consent or as consideration for the agreement.

The District Court found that the Lawsons' expenditures were not sufficient to allow for the relaxed standard of an easement by prescription.

The fourth defense of the Lawsons was an easement by acquiescence. The Lawsons next contended that the District Court should have recognized an easement by acquiescence. But one cannot establish a new easement through easement by acquiescence. The Lawsons tried to claim they were not asking for the establishment of a new easement but were attempting to shift the boundaries of the easement fully granted by the Mary L. Becker Trust over Lots 19 and 20 to the boundaries of the path to the lake. The Court found that agreement would not prevail because Mary L. Becker Trust never owned Lots 19 and 20 as previously discussed. The Court remanded the case to the District Court to address the issue of an easement by prescription.

V. Degeneffe v. Home Pride Contractors, Inc.

Iowa Supreme Court No. 23-1510. Filed January 24, 2025

This case is included in this outline because it deals with a roofing contractor on a residential property. Lance and Tracy Degeneffe entered a roofing contract with Home Pride Contractors, Inc. to repair and replace their roof, gutters and siding after wind and hail damage. Home Pride completed the repairs and billed the Degeneffes who refused to pay. Home Pride hired an attorney to collect the debt. The Degeneffes sued Home Pride alleging that its prior counsel engaged in harassing and abusive collection efforts in violation of the Iowa Consumer Credit Code which is found at Iowa Code §537.7103(2) (2022). The Iowa District Court for Boone County reviewed cross motions for summary judgment. Home Pride argued it was not subject to the ICC as it did not extend credit or lend money to its customers. The customer had to pay the amount due Home Pride after the work was completed. If they did not, then they would be charged interest on the unpaid balance until paid. Degeneffes argued that the roofing contract was a consumer credit sale subject to the ICCC and that Home Pride's conduct was harassing and abusive under the Iowa Consumer Credit Code. The District Court denied Home Pride's motion and granted the Degeneffes motion in part establishing that the roofing contract constituted a consumer credit sale subject to the ICCC but left the question of whether Home Pride's conduct in their dealings with Degeneffes was harassing and abusive for trial.

The Iowa Supreme Court reviewed the case to determine whether the roofing contract was a consumer credit sale subject to the ICCC. The Court concluded that Home Pride did not grant credit to Degeneffes as the contract required full payment upon completion of the work and the 1.5 monthly interest charge for late payment did not constitute an extension of credit. The Court reversed the District Court's entry of a partial summary judgment in favor of the Degeneffes and remanded the case for entry of summary judgment in favor of Home Pride.

W. Stuart v. City of Dubuque Building Code Advisory and Appeal Board

Iowa Court of Appeals No. 23-1673. Filed January 23, 2025

The City issued notices of violations for three properties Mr. Stuart owned citing violations of City ordinances. Stuart appealed the three notices of violations of the Dubuque Building Code Advisory and Appeal Board. The Board met on January 5, 2023, and heard Stuart's arguments. That same day the Board Chair signed three written decisions on appeals which were typed templates filled in and completed by hand to reflect the Board's findings of fact and determinations of issues presented. The decisions were signed stating "The decision is effective as of the date stated below." The date was January 5, 2023. The next day, on January 6, the Board mailed a copy of the decisions to Stuart by certified mail, postage prepaid, return receipt requested. The U.S. Postal Service attempted delivery to Stuart the next day but instead left a notice that certified mail would be available for pickup or redelivery at the post office. Stuart failed to claim the certified mail and two weeks later it was returned to the Board. On February 7, even though the

written decisions still had not been delivered to him, Stuart filed a petition for writ of certiorari challenging the Board's decisions on the appeals. On April 4, 89 days after the Board's January 5 decision, Stuart moved for an extension of time to file a
Petition for writ of certiorari. Iowa R. Civ. P. 1.1402(3) require that such motions be filed within 90 days of the challenged decision. In the motion, Stuart acknowledged that the Board made a "verbal" decision on January 5 and that he "filed his petition on February 7, 2023, which is one day after the 30 days from the time Stuart alleges the Board exceeded its jurisdiction or otherwise acted illegally. But he argued that while city personnel produced and attempted delivery of the decision, such production and delivery would necessarily take more than one day. He asked the Court to "extend the time allowed for filing the Petition for Writ of Certiorari in this matter to February 7, 2023, and find that the Petition in this action was timely filed."

The District Court dismissed the Petition as untimely. The District Court found that the Petition was filed 32 days after the mailing of the written decision and 33 days after the meeting and signing of the decision. On appeal, Stuart argued that the District Court erred in finding the petition untimely because the 30-day clock should not have started until the earliest day that he could have received the decision by certified mail, which he reasoned was January 9. He also contended that the court should have granted him an extension of time under Rule 1.1402(3) because his untimely filing was "due to a failure of the Board to notify him of the challenged decision. The Court of Appeals agreed with the District Court that Stuart's 30-day clock started no later than January 6 when the Board issued and mailed its written decision - the date of his receipt is irrelevant. Because Stuart makes no argument that any action of the Board prevented him from receiving the notice within the 30-day window of filing, the Court did not abuse its discretion in denying this request for an extension of time.

X. City of Dubuque v. City Development Board

Iowa Court of Appeals No. 23-1453. Filed January 9, 2025

On December 30, 2021, property owners submitted a 100% voluntary annexation request to the City of Sageville, Iowa. In their applications, the residents cited several reasons for the proposed annexation: their desire to join the Sageville community; the lack of available county services, including high-speed internet; and the irregularity of boundaries in the area, which resulted in properties that fell within multiple jurisdictions. Because of a 2016 agreement, which prevented Dubuque from annexing Sageville land, the properties could only be merged under one jurisdiction by annexation into Sageville. In April 2022, Sageville brought the annexation request to the City Development Board of the State of Iowa. The Board treated this request as a 100% voluntary annexation. Several board meetings were held in the summer and fall of 2022, in which the annexation applications were discussed. One of the central concerns was Sageville's ability to provide adequate municipal services. As of the June meeting, Dubuque was not providing any services to the proposed annexed territory and the county only provided rural services. Dubuque argued that the annexation should be denied because the Board was bound by two prior decisions in 2003 and 2005 respectively, in which it denied two separate

applications for annexation because Sageville was unable to provide municipal services. But Sageville argued that there had been substantial improvements since its change of leadership in 2019. The Board openly approved the annexation finding presumption of validity applied despite Sageville providing "only a rural level of services." Dubuque petitioned for judicial review on four of the five applications. The District Court affirmed the Board's decision and then Dubuque appealed.

The view by the Iowa Court of Appeals is limited to whether the Board's decision was "without substantial supporting evidence." The Iowa Code §368.22(2). "There is substantial evidence if a reasonable person could find the evidence adequate to reach such a decision."

The Iowa Court of Appeals went through the challenges of Dubuque which stated that the District Court erred by: (1) presuming the annexation is valid; (2) failing to apply applicable administrative rules; and (3) considering improper evidence. The Iowa Court of Appeals went through the background on voluntary annexations. They found this is 100% voluntary annexation. Dubuque concedes that such a presumption applies here, which is a presumption of validity on a voluntary annexation. Dubuque relies on Section 368.7(4) of the code to argue that presumption was rebutted because Sageville was unable to provide services to the annexed territory. The Iowa Court of Appeals disagreed because Section 368.7(4) is utilized for competing annexation requests, and this is not a circumstance in which two cities are vying for the same territory. This case is a 100% voluntarily annexation and Section 368.7(4) is not applicable.

Dubuque then argued that the Board was approving the annexation by Iowa Administrative Code Rule 263-7.7(2), which directs the Board to deny applications barred by Iowa Code §368.17. Under Section 368.17(4), the Board may not approve annexation unless the annexing city "will be able to provide to the territory substantial municipal services and benefits not previously enjoyed by such territory." However, Section 368.17 does not apply to voluntary annexations. The Court of Appeals found that even if it did apply Iowa Code §368.17, the Court already determined that substantial evidence supports the Court's finding that Sageville can provide municipal services, and therefore, Dubuque's argument is without merit. The Court of Appeals found that the District Court did not err in its ruling on judicial review, and they affirmed the decision.

Legislation

Senate File No. 2204 – Restrictions on foreign ownership of agricultural land.

Senate File No. 2268 – Assistance animals and service animals as a reasonable accommodation for housing and requirements for findings of disability.

Senate File No. 2291 – An act relating to real estate brokers and brokerages.

House File No. 2276 – An act relating to the zoning of maternity group homes.

House File No. 2388 – An act relating to the regulation of styles and materials used for residential building exteriors.

House File No. 2485 – An act relating to the regulation of watercraft and equipment on public lakes by common interest communities and certain nonprofit corporations.