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IN THE SUPREME COURT OF IOWA

NO. 18-1416

HAROLD YOUNGBLUT,
Plaintiff-Appellee,

vs.

LEONARD YOUNGBLUT,
Defendant-Appellant.

Appeal from the Iowa District Court in and for Black Hawk County
The Honorable Andrea J. Dryer
No. CVCV 127065

DEFENDANT-APPELLANT'S FINAL BRIEF

Philip A. Burian, AT0001284
Robert S. Hatala, AT0003340
Simmons Perrine Moyer Bergman, PLC
115 Third Street SE, Suite 1200
Cedar Rapids, IA 52401-1266
Tel: 319-366-7641; Fax: 319-366-1917
pburian@simmonsperrine.com
rhatala@simmonsperrine.com

ATTORNEYS FOR DEFENDANT-APPELLANT
LEONARD YOUNGBLUT

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case as it involves substantial questions of enunciating or changing legal principles. *See* IOWA R. APP. P. 6.110(2)(f).

Agnes Youngblut ("Agnes") died on June 2, 2014, leaving her March 7, 2014 Will ("2014 Will"). In relevant part, Agnes' 2014 Will provided that Harold Youngblut ("Harold") would receive a majority interest in the family farm corporation, Youngblut Farmland, Ltd., ("YFL"), and that Leonard would inherit the separate "South Farm" provided that Leonard sold his YFL shares, valued by Agnes' Estate at $443,000, to Harold for $1. Harold not only consciously declined to contest the 2014 Will, he fully accepted all of the benefits to him under it. After Harold accepted Agnes' YFL shares and Leonard's YFL shares for just $1 under the 2014 Will, Harold filed this lawsuit claiming that the very same 2014 Will was the result of Leonard's tortious interference with bequest. While this case bears no semblance to *Huffey v Lea*, 491 NW 2d 518 (Iowa 1992), Harold erroneously argues that the *Huffey* majority holding supports a tortious interference with a bequest claim even where the plaintiff accepted the benefits of the very same will that allegedly resulted from the claimed tortious interference. Contrary to Harold's position, the facts require application of *Hainer v. Iowa Legion of Honor*,

43 N.W. 185, 187 (Iowa 1889) (One may not "avail herself of the provisions of the will as far as they are favorable to her, and deny them so far as they are adverse.").

The *Huffey* majority opinion, moreover, applied a claim preclusion analyses that it is unlikely still even Iowa law. The prevailing *Huffey* opinion represented a minority view even when it was decided because most courts and commentators concluded that tortious interference claims should not be available when a probate will contest is available. *Huffey*, 491 N.W.2d at 523-27 (McGivern, C.J., dissenting); John C.P. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remedying Wrongful Interference with Inheritance*, 65 STAN. L. REV. 335 (2013). More recently, the Iowa Supreme Court held that, under the claim preclusion doctrine, a final judgment on a claim for breach of an insurance contract bars a subsequent bad-faith lawsuit against the insurer because the plaintiff could have raised both claims in their initial action. *Villarreal v. United Fire & Cas. Co.*, 873 N.W.2d 714 (Iowa 2016). Casting serious doubt on the continued viability of *Huffey*, Justice Appel wrote:

> In *Huffey*, we considered whether a beneficiary could bring an action for tortious interference with a will after the beneficiary had previously litigated a will contest involving the same parties. We concluded that claim preclusion did not bar the subsequent action, emphasizing the state of mind required to support a tortious-interference action which was absent from the will contest. The majority opinion in this case essentially adopts the view espoused by the *Huffey* dissent. **Whether *Huffey* is good law after today is unclear.**

> *Id*. at 737, n.8 (Appel, J., dissenting) (internal citations omitted and emphasis added).

While a plenary overturning of *Huffey* is not at all necessary to reverse the District Court below, the continued validity of *Huffey* is in serious question and the unique factual background presented by this case make it appropriate for the Iowa Supreme Court to retain this case.

STATEMENT OF THE CASE

Agnes Youngblut ("Agnes") executed a will in 2014 ("2014 Will"). When Agnes died, Plaintiff Harold Youngblut ("Harold") consciously chose to not contest the 2014 Will. Instead, he fully embraced it and accepted all of its benefits. Harold accepted Agnes' shares in Youngblut Farmland Ltd. ("YFL") under the 2014 Will and knowingly allowed the deadline for contesting Agnes' 2014 Will to pass. He then waited for his brother, Leonard Youngblut ("Leonard"), to himself comply with Agnes' 2014 Will by selling all of his shares in Youngblut Farmland Ltd. (valued by Agnes' Estate to be worth $443,000) to Harold for $1 in exchange for receiving the "South Farm" under Agnes' 2014 Will. Only then did Harold file this lawsuit alleging that the 2014 Will was the result of tortious interference with bequest by Leonard and his sisters, Teresa Schmitz, Rita Rodgers and Lisa Althof.

The sisters all settled with Harold based on costs of defense and the claims against them were dismissed before trial.[1]

After the District Court denied all of Leonard's timely motions, on March 8, 2018, the jury returned a verdict against Leonard Youngblut in the amount of $396,086.88 along with punitive damages of $200,000. Judgment was entered against Leonard and in favor of Harold in the amount of $596,086.88 plus interest at the rate of 4.39% plus costs. (App. 121). Following the denial of Leonard's motions for directed verdict and for JNOV, *id.*, Leonard filed a timely Notice of Appeal. (App. 124).

This appeal is primarily based on the proposition that Harold's cannot bring a tortious inference claim after accepting the benefits of Agnes' 2014 Will rather than bringing a will contest over it. While the holding in *Huffey v Lea*, 491 NW 2d 518 (Iowa 1992) does not apply to the facts of this case, the *Huffey* reasoning calls for the conclusion that the facts of this case required Harold to bring a timely will contest. The fact that Harold actually accepted the benefits of the 2014 Will before asserting that the very same will was the product of tortious interference completely removes this case from the *Huffey* holding and required dismissal of Harold's claim under well-established etoppel law. Moreover, *Villarreal v. United*

[1] As cost of defense settlements, Rita settled for $10,000, Teresa settled for $50,000 and Lisa settled for $20,000, for total of $80,000. (App. 552-553 at 607:19-608:5).

Fire & Cas. Co., 873 N.W.2d 714 (Iowa 2016) indicates that *Huffey* holding is no longer good law and Harold's tortious interference claim should have been dismissed as untimely for that reason as well.

Finally, Leonard appeals from the District Court's denial of his motion for an $80,000 *pro tanto* credit for settlement payments made by the three sisters who initially were defendants.

Harold did not cross appeal on any issue.

STATEMENT OF THE FACTS

Background

In 1980, Earl and Agnes Youngblut ("Earl" and "Agnes") formed Youngblut Farmland Ltd. ("YFL") and transferred most of their farm assets into YFL. (App. 246-247). They retained, however, their Tama County farm ("South Farm") as their own personal asset and leased the South Farm to YFL on a year to year basis for personal living income. (App. 350 at 83:1-13; App. 418-419 at 247:21-248:3; App. 458-459 at 342:3-343:17; App. 245). Over the years, Earl and Agnes gave some of their YFL stock shares to each of their 12 children (App. 456 at 335:7-12).[2] Leonard, Harold and their brother Eric, worked on the YFL land for a period of time but Leonard withdrew from direct involvement with YFL operations in

[2] Earl and Agnes had eight daughters (Teresa, Rita, Mary, Nancy, Marlys, Lisa, Anita, and Earlene (deceased)) and four sons (Len, Harold, Peter (deceased) and Eric (deceased)). (App. 243).

1998 because he could not trust Harold's business judgment or honesty (App. 354-355 at 91:2-93:8; App. 539-540 at 543:16-544:7).

Earl and Agnes' Estate Plan To Give Leonard the South Farm

Earl and Agnes always wanted to leave farm land to each of their sons, but long standing inter-family disputes raised concerns about how that would work. (App. 457 at 341:7-16; App. 477 at 391:4-12). YFL had no written succession plan, (App. 412-413 at 228:23-229:4) but they intended for Harold to take over YFL so they planned to consolidate ownership through redemption of the siblings' YFL shares. (App. 413 at 229:10-18; App. 420 at 249:8-23; App. 455 at 334:3-9).

One of Earl and Agnes' daughters, Earlene, became gravely ill, which occasioned the first YFL stock redemption on January 22, 2010. (App. 248-249). Some of Earlene's siblings disputed the value of their own YFL shares. (App. 378 at 129:11-20; App. 463-464 at 352:20-353:1). Because rising farm prices indeed increased YFL's share values, Earl and Agnes were concerned about what the redemptions from other the remaining siblings would cost. (App. 460 at 345:11-23). Earl and Agnes therefore decided to reserve the South Farm as an income source for YFL in case the redemptions were too expensive for YFL to afford on its own. (App. 460 at 345:11-23; App. 471-472 at 376:21-377:10; App. 477 at 391:13-16).

On January 31, 2011, Earl and Agnes executed mirror wills. (App. 130-140 & 141-151) ("2011 Wills"). Their 2011 Wills left their property to each other and then the last of them to die gave:

- all their shares in YFL to Harold;
- the South Farm to Harold; and
- the estate residue to their surviving daughters and Leonard.

(App. 130-140).

Family disputes over Harold's YFL management grew in the years that followed, with Leonard being especially vocal. (*See e.g*. App. 387 at 193:5-18). Daughters Rita and Nancy sold their shares back to YFL for cash in May of 2013. (App. 382 at 147:14-23). The remaining daughters, Mary, Marlys, Lisa, Theresa, and Anita, however, agreed to redemption contracts with YFL under which their stock was placed in escrow for eventual cancellation in exchange for installment payments over 10 years. (App. 382-383 at 147:23-148:8; App. 166-170, 171-175, 176-180, 181-184). The installment contacts effectively left the YFL stock ownership as follows:

	Shares	Percent
Earl Youngblut:	1,322	21.5%
Agnes Youngblut:	1,322	21.5%
Harold Youngblut	644	10.7%
Leonard Youngblut:	547	9.3%
Donna Youngblut (widow of deceased son, Peter):	474	7.7%
Anita Youngblut (in escrow pending contract sale to YFL):	374	6.1%
Lisa Althof (in escrow pending contract sale to YFL):	374	6.1%
Marlys Baebenroth (in escrow pending contract sale to YFL):	374	6.1%
Mary Miller (in escrow pending contract sale to YFL):	374	6.1%

Teresa Schmitz (in escrow pending contract sale to YFL):	299	4.8%
Ben Youngblut (Harold's son):	10	0.1%
	6114	100%

(App. 250-251).

Donna ended up just giving her shares to Harold's son, Ben. (App. 414-415 at Tr. 230:20-231:15). Thus, the plan to consolidate YFL ownership had mostly fallen into place during 2013, with Leonard being the only remaining shareholder that Harold needed removed. (App. 420 at 249:8-23; App. 421 at 251:16-20). Despite complaining about Harold's management of YFL, Leonard refused to sell his 547 shares. Harold knew Leonard's shares where worth at least $400,000, but Leonard believed they were worth much more. (App. 376-377 at 123:18-124:4; App. 377 at 124:5-9; App. 443 at 299:2-5; App. 463-464 at 352:20-353:7; App. 507-508 at 454:25-455:6).

As the sisters were entering redemption agreements on their YFL stock during 2013, Earl and Agnes were discussing changes to their 2011 Wills with attorney Teresa Hoffman of the Beecher Law Firm, which has been doing their estate planning for over 30 years. (App. 453-454 at 327:9-328:20; App. 476 at 389:20-23). Earl and Agnes met with Ms. Hoffman about a dozen times in 2013 and seven or eight times in early 2014. (App. 468 at 366:17-22; App. 479 at 393:11-16; App. 481 at 397:15-18). Earl and Agnes were never happy with how Leonard was treated in the 2011 Wills, which gave Harold too much. (App. 470 at

368:3-6; App. 478-479 at 392:20-393:3). Moreover, it became apparent that the stock redemptions from the remaining five shareholder sisters would be through 10-year installment contracts, rather than cash sales, so they knew Harold and YFL would not need revenue from the South Farm to complete the redemptions. (App. 461-462 at 348:1-349:3).[3] In sum, Earl and Agnes wanted to change their 2011 Wills to leave Leonard the South Farm because:

- their daughters' installment contracts made the South Farm unnecessary for the YFL stock redemptions;
- they always wanted to leave a farm to Leonard; and
- Harold was getting too much if he received the South Farm under the 2011 Wills.

(App. 477-479 at 391:17-393:10; App. 494 at 420:16-22).

Earl and Agnes also wanted Leonard, however, to convey his YFL shares to Harold to create peace between the brothers, but they could not force Leonard to do so. (Supp. App. 15 at 394:23 - App. 480 at 395:9). They therefore devised the idea of making Leonard's conveyance of his YFL stock to Harold a requirement of receiving the South Farm. (App. 481-482 at 397:15-398:12; App. 492-493 at 418:25-419:10).

[3] Earl and Agnes were correct about Harold and YFL not needing the South Farm to complete the stock redemption installment contracts with the sisters because YFL had them paid off well ahead of schedule at the time of trial. (App. 384-385 at 149:21-150:6).

Harold learned that his parents were discussing, with Ms. Hoffman and with their children, their intent to change their 2011 Wills that gave the South Farm to him. (App. 384 at 149:3-20; App. 408 at 224:21-24). In February 2014, Harold met with his parents at their care facility to discuss the YFL "business succession plan," which he admits included their personal wills. (App. 416-418 at 245:9-247:16). Not coincidentally, on February 22, 2014, Harold had Earl and Agnes sign a lease of the South Farm to YFL; while every previous lease was unwritten and on a year to year basis, the lease that Harold had his parents sign had a four year term so YFL would still have use of the South Farm after it passed to Leonard under the new will. (App. 421-422 at 251:21-252:16; App. 259-265).[4] Also, on March 5, 2014, Harold had his parents convey their house to him under a prior option to buy. (App. 266-267). Harold had no concerns about his parent's capacity or any influence on them when obtaining their signatures on these beneficial transfers. (App. 424-425 at 254:3-255:21; App. 423 at 253:18-24).

On March 7, 2014, Ms. Hoffman supervised Earl and Agnes' execution of new mirror wills (App. 152-154 & 155-157) ("2014 Wills"). The 2014 Will's provided that the last of them to die gave:

- all their shares in YFL to Harold;

[4] Ms. Hoffman was not involved in the drafting of the lease. (App. 487-488 at 409:22-410:9)

- the South Farm *to Leonard, but only if Leonard sold his shares in YFL to Harold for $1 within 9 months of her death;* [5] and
- the residue to the surviving daughters, *excluding Leonard.*[6]

(App. 152-154 & 155-157) (changes from the 2011 Wills emphasized).

Earl and Agnes always wanted to create peace between their children through their estate plans. (App. 467-468 at 365:14-366:16; App. 499 at 426:2-5). Their 2014 Wills were designed to do just that by giving Leonard incentive to convey his shares in YFL[7] so that Harold could operate YFL without Leonard's shareholder complaints and Leonard could farm the South Farm without need for concern about Harold's activities, good or bad.

Foreseeing, among other things, that Harold would be upset about Leonard having the option to receive the South Farm (App. 474-475 at 385:24-386:6; App. 495-496 at 421:15-422:10), Earl and Agnes for the first time in their estate plans wanted an *in terrorem* clause (App. 480 at 395:19-21), which resulted in the following term being placed in their 2014 Wills:

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[5] Per the stock valuation in Agnes' Estate, Leonard's share were worth about $443,000, (App. 490-491 at 416:23-417:2), though the per share value was actually much higher because his sisters' 1,795 shares were in escrow pending redemption and that redemption would reduce the total number of outstanding YFL shares once complete.

[6] Len's interest in the residue would have been about $105,000 had he not been removed as a beneficiary under the 2014 Will. (App. 490-491 at 416:23-417:7).

[7] Earl and Agnes rejected a prior will draft that required Harold to pay Len $300,000 for his YFL stock (App. 469 at 367:7-24).

> Should any person contest the validity of this last will and testament, any provision for said person under the terms of this last will and testament shall lapse and said person shall be treated as if he or she had predeceased me leaving no issue him or her surviving me.
>
> (App. 153, Division V).

Harold quickly learned that his parents signed the new 2014 Wills. (App. 425 at 255:5-14). By May of 2014, Harold was exploring options to defeat the 2014 Wills to include asking attorney Rick Morris, Ms. Hoffman's partner (App. 454 at 328:2-6), if Leonard knew about the will changes and whether the South Farm would pass to Harold if he somehow convinced Leonard to sell his YFL shares *before* Earl and Agnes died. (App. 427-428 at 265:7-266:25). In the meantime, Leonard continued to request information about YFL finances. (App. 547 at 566:16-25).

Harold Deliberately Chose To Not Contest The 2014 Will

Earl died on June 1, 2014, so all his property passed to Agnes, and then Agnes died the next day, on June 2, 2014. (App. 242; App. 474 at 385:4-10). The second publication of notice of probating the 2014 Will was made on June 20, 2014 and individual notices were mailed to all the heirs, including Harold. (App. 484-485 at 400:8-401:4; App. 482-485). Thus, October 20, 2014 was the deadline for challenged the 2014 Will under IOWA CODE § 633.309.

On or before the day Agnes died, Harold actually knew:

- the complete contents of Agnes' 2014 Will (App. 446 at 306:2-9);

- that Leonard engaged in all the conduct that he claimed at trial was improper and constituted tortious interference with bequest (App. 431 at 272:16-18; App. 432 at 273:7-11), including but not limited to:
    - Leonard leaving a so called "Letter of Intent" with his parents (App. 445 at 303:12-22; App. 450-452 at 324:6-326:5);
    - Leonard sending emails to his siblings discussing proposals for Earl and Agnes' estate plans (App. 358-375 at 100:5-117:25);
    - Leonard threatening a lawsuit against YFL and Harold for his self-dealing (App. 431 at 272:22-25);
    - Leonard and his sisters talking to their parents about changing their 2011 Wills (App. 431 at 272:19-21); and
    - Leonard continuing to request financial information about YFL (App. 574 at 566:16-25) and complain about Harold's management of YFL. (App. 431 at 272:11-15).

Nothing about Leonard's actual or alleged conduct raised during trial below on the tortious interference claim was unknown to Harold at the time of Agnes' death.

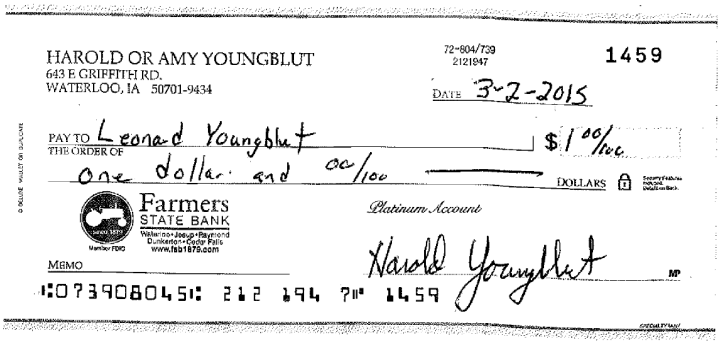
Harold also knew, however, that the 2014 Will contained the *in terrorem* clause and that, if he filed a will contest and lost, he could lose the majority interest in YFL that he inherited from Agnes under the 2014 Will.[8] (App. 429-430 at 270:3-271:24; App. 432 at 273:1-6; App. 435-436 at 291:23-292:25). Harold retained attorney Mark Rolinger to visit with Ms. Hoffman about the circumstances of the 2014 Will signing. (App. 432 at 273:12-21; App. 434 at

[8] After the redemption of the 1,795 from the sisters was complete, 4,319 shares would remain outstanding so Agnes' 2,644 shares effectively represented 61% of the YFL.

290:6-24). Ms. Hoffman told Harold and Mr. Rolinger that she was aware of the contact all of Earl and Agnes's children had with them about their estate plans and that she did not think it improperly influenced them. (App. 486 at 407:4-17). Harold also at that time knew the four month deadline for challenging the 2014 Will was in October of 2014. (App. 435 at 291:10-20). After meeting with Ms. Hoffman, Harold with the advice of counsel consciously chose to not file a file contest because such a contest risked losing Agnes' YFL stock that he inherited under the 2014 Will. (App. 340 at 11:19-20; App. 434-435 at 290:25-291:9; App. 433 at 281:21-22). Conversely, a *successful* challenge of the 2014 Will would have reinstated the 2011 Will, under which Len had no incentive to convey his YFL stock.

On February 2, 2015, with the will contest deadline long past, Leonard gave timely notice of his intent to exercise the option to receive the South Farm in exchange for selling his YFL stock to Harold for $1. (App. 482-483 at 398:21-399:3; App. 268-269). Harold learned of the notice shortly thereafter. (App. 437 at 293:3-24). Ms. Hoffman believed Harold had accepted the terms of Agnes' 2014 Will (App. 483 at 399:13-15) and Leonard thought so as well. (App. 568 at 701:6-10). Therefore, on February 8, 2015, Agnes' Estate conveyed a Court Officer Deed on the South Farm to Leonard. (App. 439 at 295:8-16; App. 270-272). On March 2, 2015, Harold issued a check in the amount of $1 for Leonard's YFL

stock, which was thereafter transmitted to Leonard. (App. 273; App. 439-440 at 295:22-296:8).



HAROLD OR AMY YOUNGBLUT
643 E GRIFFITH RD.
WATERLOO, IA 50701-9434

72-604/739
2121947

1459

DATE 3-2-2015

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Harold Youngblut

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Harold knew that conveying $1 check to Leonard was what Agnes wanted (App. 440 at 296:6-8) and he expected it to cause Leonard to convey his YFL stock to him. (App. 440-441 at 296:21-297:17). He gave no indication whatsoever that he still planned litigation over Agnes 2014 Will. (App. 390 at 196:12-20).

By early March of 2015, Harold had accepted Agnes' YFL stock under the 2014 Will (App. 437-438 at 293:294:2) and he confirmed his acceptance of Leonard transferring his YFL shares for $1 as a condition of Leonard receiving the South Farm under the 2014 Will; Leonard's therefore conveyed his shares in YFL to Harold on March 25, 2015. (App. 441-442 at 297:18-298:14; App. 274-281). Under the 2014 Will, Harold had safely secured 2,644 YFL shares from Agnes without risking the effects of the *in terrorem* clause, and 547 YFL shares worth at least $443,000 from Leonard for just $1. (App. 490-491 at 416:23-417:2). He had converted his 10% interest in YFL to a 53.7% interest. Harold's himself admits that accepting the 2014 Will netted him over $3 million worth of YFL stock for

just a $1 check. (App. 443-444 at 299: 6-300:1).[9] On April 2, 2015, just eight days after securing the full bounty of Agnes' 2014 Will, Harold defied Agnes' last hopes of peace between her children by filing this lawsuit to allege that Leonard tortiously caused Agnes to sign the very same 2014 Will under which he received such great benefit. (App. 7-10).

Leonard's Well-Founded Assertion That Harold Was Self-Dealing with YFL Assets

The trial produced considerable evidence regarding Leonard's contemplation of legal action against Harold and YFL as a shareholder. (*See e.g.,* App. 466 at 364:17-24). *While such facts do not in any way affect the legal issues on appeal*, a few examples provide helpful context and show that Leonard's concerns, if sometimes in-artfully expressed, were legitimate and gave Harold considerable reason to want take control of Leonard's YFL stock under the 2014 Will.

In 2004, for example, Harold came up with the idea of causing YFL to invest $20,000 in a Gold's Gym franchise (a/k/a Waterloo Total Fitness) for *Harold's* own personal benefit. (App. 362 at 104:11-22; App. 371 at 113:18-22; App. 404 at 213:3-7; App. 405-406 at 214:23-215:15). Harold lied on the Gold's

[9] YFL would have 4,319 shares outstanding after the redemption of 1,795 shares from the sisters was completed. Therefore, the 3,191 shares that Harold took under the 2014 Will (2,644 from Agnes and 547 from Leonard) effectively represented 73.8% of YFL and, if one accepts Harold's YFL valuation at $6 million (App. 443 at 299:6-9), his ultimate take under the 2014 Will actually was in the range of $4.4 million in stock.

Gym franchise contract by stating that he and his parents were the only shareholders of YFL. (App. 404 at 213:22-17; App. 252-254). Mismanagement of the gym eventually resulted in Gold's Gym suing YFL. (App. 407 at 223:4-14). Harold failed to tell his sibling shareholders that he caused YFL to invest in his own personal gym business and that it led to YFL getting sued. (App. 403 at 212:12-14; App. 407 at 223:15-18).

In 2005, Harold started his own personal land development business called "Deer Creek Development," which was of no benefit whatsoever to YFL (App. 342 at 74:8-9; App. 387-388 at 193:19-194:6). Harold caused YFL to mortgage its land in order to borrow $1.7 million to buy a tract of land referred to as the "dog track" or "Greenbelt" land. (App. 388-390 at 194:7-196:23; App. 512-513 at 479:10-480:8). Harold formally assumed the title of YFL president in 2006 (App. 386 at 186:9-15), then caused YFL to give the Greenbelt land to Deer Creek, but the mortgage on YFL's land that secured Harold's land speculation remained in place. (App. 391 at 197:17; App. 392 at 198:20-25). Harold later caused YFL to convey a deed of trust *on YFL land* to further secure his Deer Creek land speculation and caused YFL to issue a guaranty of Deer Creek's debts so, if Harold's Deer Creek land speculation failed, YFL was at risk of losing its farmland to the bank. (App. 395-397 at 203:19-205:6; App. 402 at 211:2-25; App. 410-411

at 226:18-227:5; App. 559-560 at 644:20-645:19; App. 563-565 at 654:6-656:3; App. 255-258; App. 561-562 at 647:3-648:9; App. 286-288).

Harold further used YFL to keep Deer Creek afloat by causing YFL to: make loan payments for Deer Creek (App. 393 at 199:1-25); make no-interest "loans" to Deer Creek (App. 394 at 200:9-22); and periodically transfer funds to Deer Creek. (App. 365 at 107:5-24; App. 366 at 108:9-20; App. 407-409 at 223:19-225:9; App. 449 at 319:13-18; App. 510-511 at 476:8-477:7). Moreover, Deer Creek sold a parcel of land to "Skyview" for $275,000 and applied the proceeds to pay down Deer Creek's own debt (App. 400 at 209:20-22; App. 401-402 at 210:22-211:1), but then Harold caused YFL to buy that exact same tract of (non-farming, speculative) land from Skyview for $308,000 of new money from YFL. (App. 398-399 at 207:11–208:2; App. 509-510 at 475:16-476:7). Although the information disclosed by Harold was always cryptic, YFL's own accountant determined that Deer Creek owed $427,388 to YFL at the time of Agnes' death. (App. 514-516 at 486:24-488:25; App. 197).

Aside from Iowa law, Harold's blatant self-dealing was done in violation of the corporate bylaws. (App. 566-567 at 668:18-669:14). Discontent increasingly simmered among some of Harold's sibling shareholders and matters were not helped when he locked his sister, Lisa Althof who was acting as bookkeeper, out of YFL's computer records because she started questioning transactions. (App. 576-

578 at 740:20-742:18). Harold had an abundance of reason to leave the 2014 Will in place until he was rid of Leonard as FYI shareholder so that Leonard would no longer have reason to question his YFL management.

ARGUMENT

I. HAROLD'S TORTIOUS INTERFERENCE CLAIM FAILS AS A MATTER OF LAW BECAUSE HE CHOSE TO EMBRACE THE 2014 WILL AND ACCEPT ALL OF ITS BENEFITS RATHER THAN FILE A TIMELY CONTEST OF THE 2014 WILL.

A. Preservation of Error.

Leonard began raising these issues early in the case. (*See* App. 24-45; 46-49; 50; 51-56). Leonard renewed these issues through a Motion for Directed Verdict at the close of all of the evidence. (App. 579-581 at Tr. 771:18-773:12; App. 587 at 805:7-12; App. 63-84). The District Court reserved ruling on the issues prior to submitting the case to the jury. Leonard renewed his motion through a Motion for JNOV after judgment was entered. (App. 96-120). The District Court denied all of Leonard's relevant trial and post-trial motions on July 26, 2018. (App. 121-123).

B. Scope of Review.

The scope of review on a District Court's ruling on a motion for summary judgment, motion for directed verdict and a motion for judgment notwithstanding the verdict is for errors at law. IOWA R. APP. P. 6.907, *Sieh v. Sieh,* 713 N.W.2d 194, 196 (Iowa 2006) (summary judgment), *Pavone v. Kirke* 801 N. W. 2d 477,

486-487 (Iowa 2011) (directed verdict), *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 845 (Iowa 2010) (JNOV).

C. Argument.

"[A] man can not have his cake and eat his cake."

Thomas, Duke of Norfolk.[10]

It is self-evident that Harold wanted to enjoy the benefits of the 2014 Will without threat of the *in terrorem* clause but, at the same time, still enjoy the benefits of the 2011 Will without it being reinstated through a sincere contest of the 2014 Will. This case is an obvious will contest, just one with attempted surgical selectivity. "It is an exceedingly stubborn principle that no one shall be permitted to claim under, and adverse to, a will." *Hainer v. Iowa Legion of Honor*, 43 N.W. 185, 187 (Iowa 1889).

Throughout the case below, Harold argued that *Huffey v Lea*, 491 NW 2d 518 (Iowa 1992) supports a tortious interference claim in under these facts. In sharp contrast to *Huffey*, however, Harold embraced the 2014 Will: he accepted Agnes' YFL stock shares under the 2014 Will and he seized control of Leonard's own stock in YFL (valued by Agnes' Estate at $443,000 (App. 490-491 at 416:23-417:2)) for just $1. Thus, he paired majority shareholder ownership of YFL with

[10][sic] Letter to Thomas Cromwell. *Letters and Papers, Foreign and Domestic, Henry VIII, Volume 13 Part 1: January-July 1538 (p. 189, ref. 504)*. Institute of Historical Research. http://www.british-history.ac.uk/letters-papers-en8/vol13/no1/pp176-192 (July 30, 2016).

his *de facto* control and removed Leonard as dissenting minority shareholder asserting legitimate complaints about Harold's self-dealing use of YFL assets. Only after he collected all he could under the 2014 Will did he seek to unravel the one part of it he did not like by seeking the South Farm that passed to Leonard under that same 2014 Will.[11]

Harold's tactic subverted Agnes' intent in *both* the 2011 Will and the 2014 Will. Had Harold filed a sincere contest of the 2014 Will and prevailed, the 2011 Will that left Leonard a residual inheritance of roughly $105,000 would have been reinstated (and Leonard would had no incentive to convey his YFL shares). Thus, Harold's scheme thwarts Agnes' intent to leave Leonard $105,000 under the 2011 Will and, at the same time, thwarts her intent to leave Leonard the South Farm under the 2014 Will. Harold would have Agnes' intentions for Leonard at *any* relevant time defeated, which of course cannot be a proper objective of either a will contest or tortious interference cause action. *See McMullin v. Borgers*, 761 S.W.2d 718, 720 (Mo. App. 1988) (holding that such tactical use of a tortious interference with bequest claim "offend(s) the goals of the undue influence action

[11] Any attempt to distinguish Harold seeking a money judgment against Leonard for the value of the South Farm from Harold seeking to recover the South Farm itself is belied by the fact that Harold also sought a constructive trust on the South Farm itself to ensure his recovery of the actual farm itself through his tortious interference claim. (App. 16-17).

which seeks to implement the true intentions of the testator). *See generally*, 13 IA. PRAC., PROBATE § 13:10 ("Intention of testator must govern").

1. To the extent, if any, that *Huffey* still is valid law, it does not to any extent support Harold's claim in this case.

The probate code provides that the exclusive means of contesting or setting aside a will to reinstate a prior will is by "filing a written petition in probate proceedings." IOWA CODE § 633.308 (2015). The time within which a probate action must be commenced is among the shortest periods recognized in Iowa law in order to give finality to the beneficiaries of the estate. *See* § 633.309 (2015). In this case, that deadline was October 20, 2014, four months after the second publication of notice on June 20, 2014. (App. 484-485 at 400:8-401:4; App. 828-285). Harold consciously chose to not file a claim within that four month deadline. Of course, the *Huffey* plaintiffs did not accept the benefits of the will before claiming it was tortiously procured.

Aside from Harold's acceptance of the beneficial 2014 Will terms, *Huffey* is of no help to Harold even if, *arguendo*, the *Huffey* holding is still valid law. The substantive issue in *Huffey* was claim preclusion; *i.e.,* what effect a *prior successful will contest* in probate had on the ability to bring a subsequent tortious interference claim. The entire *Huffey* opinion was predicated on the fact that there was a successful prior will contest. In contrast, *Harold never filed a prior will contest* because there was too much at risk: if he lost, he might forfeit Agnes' stock under

the *in terrorem* clause but, if he won, he would not get Leonard's YFL stock and faced a seemingly inevitable minority shareholder action that had real teeth. This lack of a prior will contest stands as another crucial distinction from *Huffey.*

The *Huffey* opinion does, however, offer some instructive discussion. George and Jean Huffey commenced a timely will contest in probate alleging that they would have inherited a farm in a June 1986 will but for a new will being procured through undue influence in July of 1986, when the testator lacked testamentary capacity. *Id.* at 519. The jury found the allegations to be true, set aside the July will, and reinstated the June will. *Id.* Thereafter, the Huffeys initiated a second lawsuit against the July will beneficiaries alleging, *inter alia*, that the beneficiaries tortiously interfered with the Huffeys' inheritance rights under the June will thereby causing additional damages in the form of legal fees, loss of farming time, and mental anguish incurred during the prior will contest, but that could not be recovered in the prior will contest. *Id.* at 521.

The *Huffey* Court relied exclusively on *Peffer* v. *Bennett,* 523 F.2d 1323 (10th Cir.1975) for the proposition that a tortious interference claim can be brought for consequential damages incurred because of the prior successful will contest. *Huffey,* 491 N.W.2d at 521. Once adjudicated to have merit, the Court reasoned that a will contest did not provide a full remedy. Since the damages sought in the tort claim were not available in the prior will contest, the subsequent tort claim was

not barred by claim preclusion. *Id.* In the present case before this Court, notably, the District Court dismissed Harold's claim for the consequential damages available in *Huffey* because this case simply cannot be fit into the *Huffey* paradigm. (App. 85-86).

Section 633.309 expresses a public policy favoring efficient estate administration, certainty and closure in addition to ensuring that controversies are resolved while recollections are fresh. *Cf. Furnald v. Hughes*, 804 N.W.2d 273, 276 (Iowa 2011) (discussing Ch. 614). *Huffey* does not establish a uniform rule that tortious interference claims are always available regardless of probate will contest proceedings or lack thereof. To conclude the *Huffey* does establish such a rule would largely eviscerate § 633.309 and render it meaningless because such a rule would essentially allow nearly *every* will contest claim based on an actor's influence over the testator to be branded as a tortious interference claim after the deadline.

The *Huffey* Court observed that "courts have held that a person cannot bring an action for intentional interference if adequate relief is available in a probate proceeding. *Huffey*, 491 N.W.2d at 522 (citing *DeWitt v. Duce,* 408 So.2d 216, 218-20 (Fla.1981); *Johnson v. Stevenson,* 152 S.E.2d 214, 217 (N.C. 1967). Indeed, *Huffey* specifically recognized that there are limitations to the tortious interference cause of action and that there is no "bright-line rule" on when the tort

claim can be brought independently. *Huffey*, 491 N.W.2d at 522. *See also*, *Winterfeld v. Winterfeld*, 665 N.W.2d 439 (table) 2003 WL 1523296 (Iowa App. 2003) (holding that issue preclusion barred plaintiffs from bringing claims in tort action that had already been adjudicated in probate proceedings). The availability of an independent tortious interference claim depends on factors that include:

> (1) whether the plaintiff first sought a probate remedy or whether bringing a probate remedy was even possible (*e.g.,* in the case of a destroyed will or in a case in which the alleged wrong was not discovered until after the probate proceedings were completed);
>
> (2) whether any probate remedy obtained by the plaintiff was adequate and provided plaintiff with a complete remedy;
>
> (3) whether it was possible to litigate all issues in the probate court; and
>
> (4) whether the particular state probate court had jurisdiction of the tort claim.
>
> *Huffey*, 491 N.W.2d at 522.

In this case, Harold knew about the 2014 Will and all of the facts surrounding it before Agnes even died, then he actively evaluated a will contest claim with counsel. He simply made the tactical decision to delay his legal action until after Leonard was lured into giving him Leonard's YFL stock. If Harold was sincere and correct in his belief that the shift of the South Farm from Harold to Leonard in the 2014 Will was the product of bad conduct that unduly pressured Agnes, he readily could have obtained complete relief and avoided his alleged damages through a timely will contest to reinstate the 2011 Will that left the South

Farm him. There is nothing that Harold seeks to establish in this case that he could not have established in a will contest under § 633.308. The only arguable exception to this conclusion is the consequential damages that he sought but, again, those consequential damages available under *Huffey* were dismissed in this case because Harold never brought a prior will contest so this case simply did not fit within the *Huffey* holding.

Likewise, there was no jurisdictional or procedural impediment to Harold making his current claim through a will contest. Harold was given all timely notices of the probate of the 2014 Will and even accepted the benefits of it. The undue influence element of a will contest would have been coextensive with the element of Leonard's motives and conduct, and causation, which Harold fully litigated in this case. A will contest is an action at law with a right to a jury to the same extent as this tort claim. IOWA CODE § 633.311. *See* 13 IA. PRAC., PROBATE § 10:1 (2015). If, Harold wanted to seek consequential damages based on the additional tort claim element of Leonard's state of mind in concert with the ordinary will contest, there was no impediment to him doing so during a will contest.

Unlike the plaintiff in *Huffey,* Harold is unable to articulate any legal reason why he could not have raised his entire claim through a contest of Agnes' 2014 Will; he only had tactical reasons for not doing so. Consideration of each of the

four factors discussed in *Huffey* yields the unequivocal conclusion that Harold was *required* to bring this claim as a will contest because, essentially, he *could have* brought this claim as a will contest - he simply decided he wanted the benefits of the 2014 Will first.

McMullin v. Borgers, 761 S.W.2d 718, 719–20 (Mo. App. 1988) is directly on point. Like Harold, the *McMullin* plaintiff consciously chose to not timely file an available will contest and instead brought a later tortious interference claim for strategic reasons. The Court rejected the tactic for several reasons:

- "Where the alleged tort involves superseding one will with another, such an action would offend the probate code by requiring both the effective revocation of an accepted will and the probate of a rejected will."
- A successful will contest would have replaced the contested will with the earlier will giving the plaintiff his full expectancy without suffering actual damages.
- Allowing a tortious interference claim when a will contest is available "would merely encourage plaintiffs to forego the proper remedy of a will contest based on undue influence for the more lucrative damage options available in a tort action."
- The tactic would "offend the goals of the undue influence action which seeks to implement the true intentions of the testator."

Id. at 719-720.

The *McMullin* reasoning applies with equal force here. Harold seeks to upend basic probate principles and defeat *all* of Agnes' intentions for Leonard by allowing her revocation of the undisputed 2011 Will to stand while allowing the

probate of her disputed 2014 Will to proceed to conclusion. In the end, § 633.309 still has to mean something so that one will or another, *rather than neither will*, is enforced.

In *Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795 (Iowa 1978), the Iowa Supreme Court first recognized the interference with bequest claim after a prior will contest was dismissed as untimely. The trial court transferred the tort action from the law docket to the probate docket then dismissed it on summary judgment. No resistance to the motion for summary judgment was filed in the trial court, *Id.* at 794, so why the plaintiff filed the will contest late is unknown, but the Supreme Court made clear that the question it was deciding was only whether the tort claim was properly transferred to the probate docket. *Id.* at 794.[12] The reported opinion never reached the issue of which damages are available in a probate will contest vis-à-vis tortious interference action at law as *Huffey* did. *Id.*

Quite significantly, *Frohwein* did not involve a plaintiff who consciously chose to accept the benefits under a disputed will before attacking it through a tortious interference claim and thereby leave the prior *undisputed* will revoked; this

[12] In discussing *Frohwein,* the Washington Court of Appeals observed that "[w]hile it is true that this case does not expressly limit the tort's application to situations where relief is not available in a will contest, there was no will contest possible in that case because the statute of limitations had run. The court therefore did not address whether this tort would have been available if an earlier will contest had been unsuccessful." *In re Estate of Hendrix*, 134 Wash. App. 1007, 2006 WL 2048240, at *16 (2006).

per se makes *Frohwein* as inapplicable as the *Huffey* holding. Setting aside the estoppel affirmative defenses in Division II below for a moment, Leonard does not seek a result that is contrary to the *Frohwein* holding. It is most unlikely that the *Frohwein* Court anticipated that its opinion would be combined with *Huffey* to allow a plaintiff to cherry pick terms out of two competing wills and defeat the testator's intent in *both* wills as Harold has done here. *Huffey*, 491 N.W.2d at 522 made clear that there are limits to the claim recognized in *Frohwein* and the particular facts herein go well beyond those limits.

2. The parts of the *Huffey* majority holding on which Harold relies is no longer valid law.

As discussed above, the four factors regarding when a tortious interference claim can be brought without a will contest discussed at *Huffey*, 491 N.W.2d at 522 all required Harold to have brought a will contest under § 633.308 *et seq.*, and his acceptance of the 2014 Will benefits makes this case wholly different than *Huffey* and *Frohwein.* To the extent that Harold still relies on parts of the *Huffey* majority opinion, however, it is unlikely that those parts still are valid Iowa law. Notably, the prevailing *Huffey* opinion represented a minority view even when it was decided in that most courts and commentators concluded that tortious interference claims should not be available when a probate will contest is available because a will contest provides an adequate remedy. *Huffey*, 491 N.W.2d at 523-27 (McGivern, C.J., dissenting, joined by Justice Neuman). For those jurisdictions

that find that a will contest may not leave the aggrieved party with a complete remedy:

> [t]he vast majority of courts require a plaintiff to first institute a will contest in probate before plaintiff is allowed to pursue a claim for tortious interference with a bequest.
>
> *Huffey*, 491 N.W.2d at 524 (McGivern, C.J., dissenting).[13]

The notion that tortious interference claim could be brought regardless of a will contest failed to gain common acceptance in the years following *Huffey. See generally,* John C.P. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remedying Wrongful Interference with Inheritance*, 65 STAN. L. REV. 335 (2013).

Not surprisingly, the *Huffey* majority application of the claim preclusion doctrine to different claims arising out of the same conduct has been called into serious doubt. In *Villarreal v. United Fire & Cas. Co.*, 873 N.W.2d 714 (Iowa 2016), this Court held that a final judgment on a claim for breach of an insurance contract bars a subsequent bad-faith lawsuit against the insurer because the plaintiff could have raised both claims in their initial action. Justice Appel wrote:

> In *Huffey*, we considered whether a beneficiary could bring an action for tortious interference with a will after the beneficiary had previously litigated a will contest involving the same parties. We concluded that claim

[13] Citing *McGregor v. McGregor,* 101 F. Supp. 848 (D.Colo.1951); *DeWitt v. Duce,* 408 So.2d 216 (Fla.1981); *Estate of Jeziorski,* 516 N.E.2d 422 (Ill. App. 1987); *Robinson v. First State Bank,* 454 N.E.2d 288 (Ill. 1983); *Smith v. Chatfield,* 797 S.W.2d 508 (Mo. App.1990) and *Johnson v. Stevenson,* 152 S.E.2d 214 (N.C. 1967).

> preclusion did not bar the subsequent action, emphasizing the state of mind required to support a tortious-interference action which was absent from the will contest. The majority opinion in this case essentially adopts the view espoused by the *Huffey* dissent. **Whether *Huffey* is good law after today is unclear.**
>
> *Id*. at 737, n.8 (Appel, J., dissenting) (internal citations omitted and emphasis added).

The *Huffey* claim preclusion reasoning was derived from *Frohwein*. *See Huffey*, 491 N.W.2d at 523-27 (McGivern, C.J., dissenting) (discussing the majority's application of the *Frohwein* claim preclusion analysis). *See also, In re Estate of Bader*, 803 N.W.2d 672 (Table), 2011 WL 2694714, at *3 (Iowa App. 2011) ("Both *Frohwein* and *Huffey* addressed the question of claim preclusion."). Thus, *Villarreal* casts doubt on the continuing viability of *Frohwein* to the same extent as *Huffey.*

A deeper analysis of *Huffey* and *Frohwein* further reveals why they cannot stand at least unmodified by *Villarreal* under the present facts. There are two grounds for a will contest: undue influence[14] and lack of testamentary capacity.[15]

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[14]The elements of "undue influence are: (1) the person be unquestionably subject to undue influence, (2) opportunity to exercise such influence and effect the wrongful purpose, (3) a disposition to influence unduly for the purpose of procuring an improper favor and (4) the result clearly appearing to be the effect of undue influence." *In re Cory's Estate,* 169 N.W.2D 837, 842 (Iowa 1969) (internal quotations omitted).

[15]Lack of testamentary capacity requires evidence that the testator did not have capacity: "(1) to understand the nature of the instrument he is executing, (2) to know and understand the nature and extent of his property (3) to remember the

A tortious interference with bequest claim focuses on the additional element of the tortfeasor's bad intentions so *Huffey*, 491 N.W.2d at 521 noted that, "[b]ecause of the differences in proof, the actions are not the same nor will the same evidence necessarily support both actions." This observation is true in the context of the full universe of potential tort claims because there are scenarios where the tort claim would be available when a will contest is not; for example, a beneficiary might be tortiously removed from a life insurance policy or a testator might be tortiously caused to make an *inter vivos* transfer of property that otherwise would pass under a valid will.

When the matter involves a change of a testamentary will, the facts supporting a will contest may not always be egregious enough to support a tortious interference claim,[16] but the facts supporting a tortious interference claim will always support a will contest. A tortfeasor's bad-intentioned conduct must actually cause the testator to change her will; if the testator did not succumb to *undue influence* or *lack capacity* to understand the effects of the tortfeasor's bad

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natural objects of his bounty and (4) to know the distribution he desires to make." *Cory's Estate,* 169 N.W.2d at 842 (internal citations omitted).

[16] *See e.g.*, *Estate of Erickson*, 922 N.W.2d 105 (Table) 2018 WL 3471093, at *2 (Iowa App. 2018).

intentioned conduct (*i.e.*, grounds for a will contest), the tortious conduct was not the cause of the will being changed.[17]

With a tortious interference claim *involving the change of a will* only having the one additional element of the actor's bad intentions, this Court's more recent application of RESTATEMENT (SECOND) OF JUDGMENTS §§ 24 and 25 requires that the will contest outcome, or the failure to timely bring a will contest at all, precludes the tortious interference claim based on the same conduct. *See Villarreal*, 873 N.W.2d at 729 (barring insurance bad faith claim because "[w]hile a first-party bad-faith claim will always require some *additional* proof, such a claim nonetheless challenges the same basic conduct as the underlying breach-of-contract claim . . . "). *Cf. Winterfeld*, 2003 WL 1523296, at *4 (holding that adverse adjudication in probate proceeding bars later tort claim on same conduct).

> Perfect identity of evidence is not the standard in Iowa for whether claim preclusion applies. To the contrary, the Restatement makes clear that "a substantial overlap" of proofs and witnesses "ordinarily" leads to claim preclusion, and even the absence of such overlap is not fatal to claim preclusion. *See* Restatement (Second) § 24 cmt. *b,* at 199; *see also id.* § 25, at 209 ("The rule of § 24 applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second

[17] Although the jury instructions are not involved on this appeal, the marshalling instruction submitted over Leonard's objection illustrates the above point and how this case has really been a will contest all along. Instruction 10 listed the specifications of tortious interference as defamation, fraud, duress and *undue influence*. The first three, however, are only mechanisms by which an actor might impose undue influence; *i.e.*, the grounds for a will contest.

> action ... [t]o present evidence or grounds or theories of the case not presented in the first action....").
>
> *Villarreal*, 873 N.W.2d at 729.

While the availability and elements of a tortious interference claim can remain generally undisturbed, the notion that the claim preclusion analysis in *Frohwein* and *Huffey* leaves the tort completely independent of any will contest should be modified or overruled to bring consistency with *Villarreal* (and other jurisdictions). *Cf. Villarreal, 873 N.W.2d at 737, n.8*. Should *stare decisis* create reservations about making an express overruling plenary, the extraordinary fact of Harold accepting the benefits of the 2014 Will provides ample opportunity for this Court's reversal of the District Court to be more narrowly tailored.

In the end, it seems unlikely that this Court intended *Huffey* and *Frohwein* to be perverted for the purpose of cherry picking desired terms from two competing wills while defeating the testator's intent under both wills. This Court should reverse the judgments below and it has multiple avenues for doing so:

1) apply the discussion at *Huffey*, 491 N.W.2d at 522 to find that Harold's acceptance of the 2014 Will benefits instead of bringing the available will contest creates an obvious exception to the claim preclusion analysis in *Huffey* and *Frohwein* and that the exception bars his tortious interference claim;

2) rely on *Villarreal* to modify or expressly overrule *Huffey* and *Frohwein* to find that a successful will contest must be brought at the same time as a tortious interference claim whenever such a will contest is available under the facts; or

3) rely on *Villarreal* and the national majority view to bar a tortious interference claim whenever a will contest is available.[18]

The conclusion that the District Court must be reversed becomes even more inescapable in light of the estoppel dimensions of the case discussed below in Division II.

II. REGARDLESS OF *HUFFEY* AND *FROHWEIN*, HAROLD'S ACCEPTANCE OF THE BENEFITS OF AGNES' 2014 WILL WITHOUT FILING A WILL CONTEST ESTABLISHES THE AFFIRMATIVE DEFENSE THAT HAROLD, AS A MATTER OF LAW, IS ESTOPPED FROM CLAIMING THE SAME 2014 WILL WAS TORTIOUSLY PROCURED.

A. Preservation of Error.

Leonard raised these issues early in the case. (App. 24-45; 46-49; 50; 51-56). Leonard renewed his motion on these issues through motion a directed verdict at the close of all of the evidence. (App. 582-586 at 776:11-780:6; App. 63-84). The Court reserved ruling on the issue prior to submitting the case to the jury for a verdict. The District Court further refused over Leonard's objections to even

[18] There is a compelling argument against the tortious interference claim even being available when a legitimate will contest can be brought. *See* Goldberg, 65 STAN. L. REV. at 348 and 378. Iowa's recognition of the tort has created an incongruous exception the rule that attorney fees are not available absent statute or contract. There is no intellectually pure reason why attorney fees are available when a person tortiously imposes undue influence on a testator but the same conduct outside the context of a will does not give rise to the same liability.

instruct the jury on the estoppel defenses. (Supp. App. 16 at 800:7-17).[19] Leonard renewed these issues through a motion for JNOV after judgment was entered. (App. 96-120). The District Court denied Leonard's motions on July 26, 2018. (App. 121-123).

B. Scope of Review.

The scope of review on a District Court's ruling on a motion for summary judgment, motion for directed verdict and a motion for judgment notwithstanding the verdict is for errors at law. IOWA R. APP. P. 6.907, *Sieh,* 713 N.W.2d at 196 (summary judgment), *Pavone,* 801 N. W. 2d at 486-487 (directed verdict), *Royal Indem.*, 786 N.W.2d at 845 (JNOV). A defendant is entitled to a directed verdict on an affirmative defense where judgment is warranted as a matter of law. 75A AM. JUR.2d § 826 *Trial*; *Rippel v. J.H.M. of Waterloo, Inc.*, 328 N.W.2d 499 (Iowa 1983) (affirming grant of motion for directed verdict on affirmative defense of assumption of the risk where it had been established as a matter of law).

C. Argument.

While Division I above itself requires reversal of the District Court's rulings, the necessity of reversal *solely* because Harold accepted the benefits of the 2014 Will is equally compelling. Although Leonard's complaints about Harold's

[19] The District Court erroneously concluded that Leonard's estoppel affirmative defense could not apply because this case was an independent cause of action rather than a *de facto* will contest. (App. 121-123).

management of YFL were absolutely legitimate, Agnes used her 2014 Will to seek peace between him and Harold:

- Leonard would receive the South Farm that she always wanted to give him (and could give him without injuring YFL due to redemption installment contracts) if Leonard gave his YFL shares to Harold for $1 so that Harold's YFL management was no longer any concern of Leonard's. Aside from the $443,000+ value of the Leonard's YFL stock, the proposal came at the cost of Leonard not receiving the residual interest that was left to him in the 2011 Will.

- Harold needed to accept, not contest the 2014 Will to reinstate the 2011 Will, and pay $1. In exchange, Harold received Agnes' YFL stock without the threat of the *in terrorem* clause, he collected Leonard's YFL stock, and he was free of Leonard's legitimate shareholder complaints about YFL's management.

Rather than risk losing Agnes' FYL stock to the 2014 Will *in terrorem* clause and risk having the 2011 Will reinstated through a successful will contest, Harold consciously accepted Agnes' stock under the 2014 Will (App. 437-438 at 293:294:2) and intentionally misled Leonard into believing that he accepted Agnes' entire 2014 Will (App. 273; App. 439-440 at 295:22-296:8) until he had Leonard's YFL shares in hand. (App. 441-442 at 297:18-298:14; App. 274-281). Only then, eight days later, did he defeat Agnes' testamentary intent in both wills and destroy the peace she created by filing his tortious interference claim on April 2, 2015. (App. 7-10).

1. Harold is equitably estopped from claiming that the 2014 Will was the product of tortious interference.

i) The law regarding acceptance of benefits under a will clearly estops Harold from claiming the 2014 Will was tortious procured.

> A party cannot occupy inconsistent positions. A person claiming under a will and accepting property given under the will is estopped from denying the validity of other provision of the will.
>
> 13 IA. PRAC., PROBATE § 10:5

The doctrine of estoppel clearly prohibits Harold from challenging Agnes' estate plan after having accepted the benefits of it. One may not "avail herself of the provisions of the will as far as they are favorable to her, and deny them so far as they are adverse." *Hainer*, 43 N.W. at 187. Harold seeks to avail himself to Agnes's YFL stock and Leonard's YFL stock for $1 under the 2014 Will, but deny the adverse part of the 2014 Will leaving the South Farm to Leonard in exchange.

> It is an exceedingly stubborn principle that no one shall be permitted to claim under, and adverse to, a will. If the testator assumes to dispose of property belonging to a devisee or legatee, the latter, accepting the benefit, must also make good the testator's attempted disposition . . . he who accepts a benefit under deed or will must adopt the whole contents of the instrument, conforming to all its provisions, and *renouncing every right inconsistent* with it. We think it very clear . . . that the intervenor, having accepted the property devised to her in the will, is estopped from denying the validity of the other provision . . .
>
> *Hainer*, 43 N.W. 185 at187-88 (emphasis added).

> Generally, an election to accept or take under the provisions of the will, works an estoppel as to *anything* inconsistent therewith. A person who accepts a benefit under a will is precluded from claiming *any right*

> *inconsistent* with that will, is estopped from later renouncing it, and having taken under the will and basing his right of action on its provisions, he *is bound by every provision thereof*.
>
> A beneficiary must take what the will gives him and relinquish all claim to what it gives another, even though it be his own property, *or he must relinquish all claim to the benefits provided for him and take the chance of making good his claim to the estate in opposition to the will*. . .
>
> 13 IA. PRAC., PROBATE § 11:48 (emphasis added).

Harold's insistence that this case should be distinguished from a will contest does not alter the operation of estoppel. "A tort claim against the proponents for tortious interference with a legacy is barred by a consent settlement of a will contest between the same parties." WILL CONTESTS § 8:24 – *Collateral attack on will* (2d ed.) (citing *Hadley v. Cowan*, 804 P.2d 1271 (Wash. 1991) and *Thompson v. Deloitte & Touche, L.L.P.*, 902 S.W.2d 13 (Tex. App. 1995)). There is no practical difference between manifesting agreement to not contest a will as Harold did and manifesting agreement to settle an existing will contest.

Iowa cases consistently find that acceptance of a will benefits bars *any* inconsistent position, not just a "will contest." *See e.g., Bogenrief v. Law,* 271 N. W. 229, 232 (Iowa 1937) (holding that beneficiary who manifested acceptance of an inheritance was later estopped from renouncing his inheritance to avoid it entering his bankruptcy estate) and *Elberts v. Elberts*, 141 N.W. 57, 59 (Iowa 1913) (holding that beneficiaries who accepted delayed possession of real estate were bound by the delay provisions and were estopped from seeking partition).

In *Koep v. Koep*, 123 N.W. 174 (Iowa 1909), a widow accepted the benefits of a life estate in property but then later tried to assert claim to an elective share of the estate. The Court observed:

> We think it immaterial in this case whether the plaintiff was entitled to her distributive share in addition to the life estate given her by the will. Even if she had a legal right to such distributive share, she might by her acts and conduct relied upon by these defendants to their prejudice estop herself from asserting this legal right. In this respect she is, like any other person having a legal right, bound by estoppel if she induces others to act to their prejudice on the assurance that such legal right is not to be asserted as against them.
>
> *Id*. at 175.

Likewise, Harold may have had the right to bring both a will contest and tortious interference claim when Agnes died, but he estopped himself from asserting the tort claim when he declined to contest the 2014 Will in order to accept Agnes' YFL shares and induced Leonard to prejudice himself by conveying his own YFL stock to Harold for $1 under the very same 2014 Will.

ii) <u>Harold also was estopped under general equitable estoppel law.</u>

While the forgoing black letter law specifically regarding wills is conclusive, the general equitable estoppel analysis yields the same conclusion. The elements of equitable estoppel are:

(1) a false representation or concealment of material facts;

(2) a lack of knowledge of the true facts on the part of the actor;

(3) the intention that it be acted upon; and

(4) reliance thereon by the party to whom made, to his prejudice and injury.

Christy v. Miulli, 692 N.W.2d 694, 702 (Iowa 2005), *Merrifield v. Troutner*, 269 N.W.2d 136, 137 (Iowa 1978).

Fraudulent intent need not be shown. *Hart v. Worthington,* 30 N.W.2d 306, 313 (Iowa 1947). "It is sufficient if a fraudulent result would follow if he be permitted to enforce a claim inconsistent with his previous declarations or conduct." *Id.*

The first element is satisfied by Harold concealing his intentions of filing suit over the 2014 Will, then affirmatively representing acceptance of the 2014 Will by accepting Agnes' YFL stock, then further affirmatively representing his acceptance by tendering the $1 check for Leonard's YFL shares, which everyone knew was a condition of Leonard receiving the South Farm under the 2014 Will. For the second element, nothing about the facts and Harold's conduct in particular gave Leonard any reasons whatsoever to know of Harold's ultimate intentions. Leonard very reasonably thought that Harold accepted the terms of Agnes' 2014 Will and did not intend to litigate over it. (App. 568 at.701:6-10). For that matter, so did the Agnes' Estate attorney, Ms. Hoffman. (App. 483 at 399:13-15). For the third element, Harold admits that he intended and knew his tender of the $1 check after the will contest deadline passed would induce Leonard to convey his YFL stock. (App. 440 at 296:6-8; App. 440 at 296:21-297:17). For the fourth element, Leonard relied on both Harold's silence and affirmative representations to tender

his YFL stock, worth at least $443,000, to Harold for $1. (App. 441-442 at 297:18-298:14; App. 490-491 at 416:23-417:2; App. 273 & 274-281).

To the extent that Harold still argues that he only agreed to not contest the 2014 Will but never said he would not sue Leonard for what Leonard received under the 2014 Will, the argument is an insincere hyper-technicality premised on a legal fiction. The very existence of this lawsuit and his request for a constructive trust on the South Farm belies Harold's claim that he is not in fact contesting the one part of the 2014 Will that he did not like. (App. 16-17). He failed to disclose his true intentions, accepted what he liked about the 2014 Will, then lured Leonard into conveying his YFL stock for the $1 knowing full well that Leonard believed that his conveyance of the YFL stock would allow Leonard to retain the South Farm and that the family would have the peace that Agnes wanted. This is a classic estoppel scenario as a matter of law and Harold's lawsuit does nothing more than seek the kind of "fraudulent result" that estoppel prevents. *See Hart,* 30 N.W.2d at 313.

2) Harold's claim is barred by the doctrine of estoppel by acquiescence and waiver.

While equitable estoppel applies for all of the reasons previously asserted, estoppel by acquiescence applies to bar Harold's claims with equal strength. Estoppel by acquiescence applies when:

(1) a party has full knowledge of his rights and the material facts;

(2) remains inactive for a considerable time; and

(3) acts in a manner that leads the other party to believe the act now complained of has been approved.

> *Markey v. Carney*, 705 N.W.2d 13, 21 (Iowa 2005) (internal quotations to 28 AM. JUR.2d § 63 *Estoppel and Waiver* at 489–90 (2000) omitted, additionally citing to *Anthony v. Anthony,* 204 N.W.2d 829, 834 (Iowa 1973)).

The doctrine applies when "a person knows or ought to know that he is entitled to enforce his right or to impeach a transaction, and neglects to do so for such a length of time as would imply that he intended to waive or abandon his right." *Anthony,* 204 N.W.2d at 834 (quoting *Humboldt Livestock Auction, Inc. v. B & H Cattle Co.,* 155 N.W.2d 478, 487 (Iowa 1967)). "Although this doctrine bears an 'estoppel' label, it is, in reality, a waiver theory." *Markey*, 705 N.W.2d at 21 (quoting *Westfield Ins. Cos. v. Econ. Fire & Cas. Co.,* 623 N.W.2d 871, 880 (Iowa 2001).[20]

For the first element estoppel by acquiescence, Harold knew (or at least believed, true or not) before Agnes even died all of the facts on which he brings his claim. Harold was fully aware of his right to challenge the bequest of the South

[20] Waiver is "the voluntary or intentional relinquishment of a known right." *Scheetz v. IMT Ins. Co. (Mut.)*, 324 N.W.2d 302, 304 (Iowa 1982) (quoting *Travelers Indem. Co. v. Fields*, 317 N.W.2d 176, 186 (Iowa 1982)). "The essential elements of a waiver are the existence of a right, knowledge, actual or constructive, and an intention to relinquish such right." *Scheetz*, 324 N.W.2d at 304. Waiver is an issue of law for the court if the material evidence is undisputed. *Id.*

Farm to Leonard through a proper will contest under Ch. 633 as well through this improper "tortious interference with bequest" claim. For the second element, Harold remained silent and inactive for months as the will contest deadline passed, he took Agnes' stock, and he watched Agnes' Estate convey the South Farm to Leonard. Any question about whether the third element is established as a matter of law is answered in the affirmative by Harold's $1 check, which clearly was an act that led Leonard to believe the 2014 Will was approved of by Harold because it allowed Harold to obtain Leonard's YFL stock under the 2014 Will. There is not a single fact offered at trial that can alter the conclusion that Harold was estopped from bringing this claim by acquiescence as a matter of law.

3) Harold's claim is barred by the doctrine of judicial estoppel.

Judicial estoppel arguably is nuanced view of the above discussion in Division I, but it illustrates how estoppel and principles at law are seamless parts of the same legal fabric that requires reversal of the District Court. Judicial estoppel prohibits the party who has successfully and unequivocally asserted a position in one proceeding from asserting an inconsistent position in a subsequent proceeding. *Tyson Foods, Inc. v. Hedlund*, 740 N.W.2d 192, 196 (Iowa 2007). In the present case, Harold Youngblut unequivocally and completely took the position in the probate proceedings for Agnes's Estate that the 2014 Will was valid and should be probated without contest. His position taken in the probate proceedings is

inconsistent with the claims Harold is making in this action. Therefore, Harold is judicially estopped from making his claim of tortious interference with bequest.

4) The statute of limitations bars Harold's claims.

Throughout all of the forgoing, it is manifest that this case was nothing more than an attempt to contest a will, just only part of a will. Harold's claim is barred because he knew of all facts giving rise to this case before the October 20, 2014 deadline for bringing a will contest under § 633.309 and consciously chose to not do so.

III. WHILE THE COURT'S RULINGS DENYING DISMISSAL OF THIS CASE IN ENTIRETY SHOULD BE REVERSED, THE DISTRICT COURT ALSO ERRED IN NOT APPLYING THE PRO TANTO RULE TO OFF-SET PRIOR SETTLEMENTS AGAINST THE VERDICT.

A. Preservation of Error.

Following the verdict, Leonard moved for *pro tanto* credit for the $80,000 paid by the settling defendants. (App. 91). The District Court denied the motion. (App. 121-123).

B. Scope of Review.

The scope of review is for errors at law. IOWA R. APP. P. 6.907. *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 773 (Iowa 1999).

C. Argument.

This Court should never reach this issue because the above discussion requires a reversal of the Court's rulings on dispositive motions and a dismissal of the entire case. However, it is not inappropriate to raise the District Court's error in failing to apply a *pro tanto* credit to the verdict based on the cost of defense settlements totaling $80,000 that was paid to Harold by Defendants Teresa Schmitz, Rita Rogers and Lisa Althof. (App. 552-553 at 607:19-608:5).

Under the *pro tanto* credit rule, a dollar for dollar credit against a plaintiff's verdict for sums received in settlement is applied. *Ezzone v. Riccardi*, 525 N.W.2d 388, 401 (Iowa 1994). "All payments in settlement of a claim, except payments in the nature of a gratuity or arising from separate contract, fall under this rule which is designed to prevent the unjust enrichment of a double recovery." *Id.* The party seeking to reduce its liability by the settlement amount must show that, without the credit, the plaintiff would recover more than full compensation for the damages. *Id.*

Since at least as early as October of *2016* when the settlements with the other defendants first came to light, Leonard has been asserting the right to a *pro tanto* credit for those settlements and Harold has known about that assertion since that time as well. (*See* App. 58). *See Ezzone* 525 N.W.2d at 402 (holding the plaintiffs being on notice of the claimed credit is adequate). Through counsel,

Harold stipulated at trial that he received $80,000 from his settling sisters. (App. 552-553 at 607:19-608:5). The Jury then made its assessment of his damages without regard to the prior settlements. (App. 87-89). Without the credit, Harold will receive more than the full compensation the jury awarded him, albeit contrary to all of the above law in Divisions I and II. Without the application of the *pro tanto* credit, Harold would receive more than the jury verdict would otherwise allow. If, *arguendo*, the verdict is allowed to stand notwithstanding all the forgoing, overwhelming reasons above for why it should be reversed, the *pro tanto* credit must be applied as some slight mitigation of the injustice of this case.

CONCLUSION

Defendant-Appellant Leonard Youngblut requests that this Court reverse the District Court's denial of his Motion for Summary Judgment, Motion for Directed Verdict and Motion for Judgment Not Withstanding the Verdict, and remand this case for dismissal of Plaintiff-Appellee's Petition and Amended Petition in entirety. In the alternative, Defendant-Appellant Leonard Youngblut requests that this Court reverse the District Court's denial of his motion for *pro tanto* credit and remand this case for application of the credit to the verdict.

REQUEST FOR ORAL ARGUMENT

Defendant-Appellant Leonard Youngblut request oral argument on all matters herein.

SIMMONS PERRINE
MOYER BERGMAN, P.L.C.

Philip A. Burian
PHILIP A. BURIAN AT0001284
ROBERT S. HATALA AT0003340
115 Third Street SE, Ste. 1200
Cedar Rapids, IA 52401-1266
Telephone: 319-366-7641
Fax: 319-366-1917
Email: pburian@simmonsperrine.com
rhatala@simmonsperrine.com
ATTORNEYS FOR DEFENDANT-APPELLANT
LEONARD YOUNGBLUT

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that, on July 25, 2019, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules:

David J. Dutton
Nathan J. Schroeder
Michael D. Youngblut

/s/ Philip A. Burian
PHILIP A. BURIAN AT0001284

CERTIFICATE OF COMPLIANCE WITH TYPE REQUIREMENTS

This brief complies with the limitation on the volume of type set forth in IOWA R. APP. P. 6.903(1)(g)(1). It contains 11,757 words, excluding parts of the brief exempted by IOWA R. APP. P. 6.903(1)(g)(1).

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/s/ Philip A. Burian
PHILIP A. BURIAN AT0001284

July 25, 2019
DATE