IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 18-1416
Black Hawk County Case No. CVCV127065

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HAROLD YOUNGBLUT,
Appellee/Plaintiff

vs.

LEONARD YOUNGBLUT
Appellant/Defendant

**APPEAL FROM THE IOWA DISTRICT COURT**
**FOR BLACK HAWK COUNTY**
THE HONORABLE ANDREA J. DRYER

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# APPELLEE'S FINAL BRIEF

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## ROUTING STATEMENT

The Appellant asserts this case should be routed to the Iowa Supreme Court because this appeal raises a substantial question of enunciating or changing a legal principles. The changing of legal principles cited by the Appellant is whether the holding in *Huffey v Lea*, 491 N.W.2d 518 (Iowa 1992), on the claim preclusion issue in an action for tortious interference with inheritance is still good law. However, the Appellant readily admits in his routing statement that "this case bears no semblance to *Huffey v Lea*" and "a plenary overturning of *Huffey* is not at all necessary to reverse the District Court below[.]" Based on the Appellant's own admissions, the issues in this case do not involve questions of changing legal principles that are necessary to its determination. Instead, this case involves the application of existing legal principles and should be routed to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

## STATEMENT OF THE CASE

In 1973, the Iowa Supreme Court in *Frohwein v. Haesemeyer*, 264 N.W.2d 792 (Iowa 1978), held that Iowa recognized the tort of tortious interference with inheritance. In so doing, the Court held that tortious interference was an independent cause of action and not a collateral attack on a will. This independent cause of action remains the law in Iowa today.

This case involves a tortious interference with inheritance claim brought by Harold Youngblut ("Harold") against his brother, Leonard Youngblut ("Leonard"), for damages he suffered after Leonard's yearlong campaign of defamation, threats, lies, and duress directed toward their parents, Earl and Agnes Youngblut. (Petition at Law and Jury Demand (Petition), App. 7-10). The result was the execution of new will on March 7, 2014, which gave Leonard the option to purchase the South Farm in exchange for his shares of YFL stock. (Exh. 11, 12, App. 152-157). If Leonard did not exercise the option, Harold would receive the South Farm, which is what the prior wills provided. (Exh. 9, 10, App. 130-151).

Agnes died on June 2, 2014 and an estate was opened. (Tr. 385:4-10, App. 474). Leonard exercised his option to purchase the South Farm from Agnes's estate on February 2, 2015. (Exh. 604, App. 268-269).

Harold filed suit against Leonard in his individual capacity on April 2, 2015 seeking compensatory and punitive damages. (Petition, App. 7-10). On July 25, 2016, Leonard filed a counterclaim against Harold on the grounds of fraudulent non-disclosure. (Defendants' Leonard Youngblut and Rita Rogers Motion to Amend Answer, Affirmative Defenses, and Counter Claims Per Iowa Rules of Civil Procedure 1.402(4) (July 25, 2016), App. 22-23, Supp. App. 4-7). The basis of the claim was that Leonard relied on

Harold not contesting the will and was injured by transferring his interest in YFL.

The matter proceeded to trial on February 27, 2018. On March 8, 2018, a Black Hawk County, Iowa jury returned a verdict in favor of Harold on his claim of tortious interference with inheritance. (Verdict, App. 87-89). The jury awarded Harold $396,086.88 in compensatory damages and $200,000 in punitive damages, finding Leonard's willful and wanton conduct was directed at Harold. (*Id*). The jury found against Leonard on his fraudulent non-disclosure claim. (*Id*).

On August 16, 2018, Leonard filed a Notice of Appeal from all adverse rulings and other orders, rulings and judgments inhering therein.

## STATEMENT OF FACTS

Family Background

Earl and Agnes Youngblut were successful hard-working farmers who owned farmland in Black Hawk and Tama County. (Tr. 76:1-77:2, 430:10-17, App. 343-344, 500). During their lives, Earl and Agnes acquired three farms: the home farm (240 acres), the Peters farm (155 acres), and the South farm (150 acres). (Tr. 79:3-14, 83:1-19, App. 346, 350). As the name implies, the home farm is where Earl and Agnes lived and raised their children. Earl and Agnes had twelve children, eight daughters (Teresa

Schmitz, Rita Rogers, Earlene McKenna, Mary Wilson, Nancy Newton, Marlys Baebenroth, Lisa Althof, Anita Youngblut) and four sons (Peter Youngblut, Leonard Youngblut, Harold Youngblut, Eric Youngblut). (Exh. 506, App. 242-245).

Youngblut Farmland Ltd

In March 1980, Earl and Agnes created a family farm corporation, Youngblut Farmland Ltd ("YFL"). (Exh. 28, 507, pp. 1-2, App. 198-234, 246-247). Earl and Agnes transferred the home farm and the Peters farm into YFL, along with all of their machinery. (Tr. 79:3-14, App. 346). The South Farm was retained by Earl and Agnes in order to provide income but was rented to YFL. (Tr. 83:1-19, App. 350). In addition to the Youngblut's land, YFL farmed land that was leased in the surrounding area. Over the course of YFL's existence, the corporation farmed on average 1500-1800 tillable acres each year. (Tr. 79:15-80:2, App. 346-347).

As one would expect, all four of the boys were actively involved in the farm operation growing up. (Tr. 88:4-12, App. 351). After high school, each of the boys were involved with YFL. Earl would also allow the boys to rent the leased land to provide them an income. (Tr. 79:15-80:2, App. 346-347). The boys also worked for Earl and Agnes's other corporation, Youngblut Farm Corporation ("YFC"). (Tr. 82:3-6, App. 349). YFC was

first operated as a farm equipment business and eventually became a successful farm chemical business. (Tr. 76:7-22, App. 343). YFC was operated out of the barn at the home place. (Tr. 83:3-6, App. 350).

Peter, the oldest, worked for YFL after high school. Peter wanted to get into the equipment business so Earl gave up the equipment business he had and allowed Peter to start his own business, P & J Equipment. (Tr. 76:6-18, 503:7-17, App. 343, 518). Eric, the youngest, was also involved with the family businesses over the years. (Tr. 82:3-6, 89:13-18, App. 349, 352). In addition, Eric took classes to become a mechanic and worked as a mechanic in addition to farming. (Tr. 81:18-20, App. 348). Unfortunately, Peter died in a plane crash in 1983 and Eric committed suicide in 2005. (Tr. 80:3-9, 308:8-14, App. 347, 447). That left only Harold and Leonard as the surviving sons of Earl and Agnes.

After Harold graduated from high school in 1975, he worked full-time with his father through YFL and the chemical business. (Tr. 73:22-74:5, App. 341-342). When the farm crisis hit in the 1980's, Harold left the farm because there was simply not enough money to support everybody who was working there. (Tr. 79:16-80:15, App. 346-347). At that time, Harold was farming 600 acres personally, which was then leased by YFL after he left. (Tr. 90:7-15, App. 353). Harold went to work for a company that was selling

home alarm systems. Eventually, he moved to Utah where he started his family. (Tr. 88:15-21, App. 351). After the farm crisis ended, Harold returned to work for YFL in the early 1990's. (Tr. 88:25-89:5, App. 351-352). When Harold returned to work with his father, Leonard was working for his father as well. (Tr. 89:9-15, App. 352).

After Leonard graduated from high school, he decided not to continue farming. Leonard first went to the University of Iowa for one semester. (Tr. 523:16-22, App. 530). Next, Leonard moved home and worked for his brother Peter's business and worked at John Deere for 13 months. (Tr. 523:23-526:6, App. 530-533). Next, Leonard moved to Ames where he attended Iowa State University and became involved in real estate. (Tr. 525:9-21, App. 532). After not finding success in Ames, Leonard moved to Hudson, Iowa and opened a real estate office. (Tr. 526:11-527:21, App. 533-534). That business was also unsuccessful and in the 1980's he returned to the family farm to work with Earl. (Tr. 528:17-530:11, App. 535-537). Leonard continued to work on the farm until 1998. (Tr. 538:20-22, App. 538).

Leonard Leaves YFL

In 1998, Leonard left the family farm because he could not get along with his brother Eric and he could not get along with his brother Harold. (Tr.

90:16-21 (Leonard and Eric throwing tools at each other), 91:2-16, App. 353-354). Leonard had accused Harold of stealing grain from his father. (Tr. 91:21-93:5, App. 354-356). He also accused Harold of not doing his fair share of the farm labor causing Earl and Leonard to do all the work. (Tr. 93:6-16, App. 356).

When Leonard left, he made the vow that he would destroy the two farm corporations that the parents had established. (Tr. 93:17-20, App. 356). Leonard made this threat directly to Earl, Agnes, Harold, and Teresa. (Tr. 94:1-7, App. 357). Earl was heartbroken by Leonard's actions. (Tr. 551:17-24, App. 541).

After leaving the family business, Leonard did not see his parents, except on holidays, until 2013. (Tr. 723:12-724:12, App. 572-573). Over that same time, Leonard had no contact with Harold. (Tr. 94:8-19, App. 357).

Succession Plan

Shortly after YFL was incorporated, Earl and Agnes transferred shares in YFL to their children as part of their estate plan. (Tr. 432:3-14, App. 501). Starting in the 1980's, the Youngbluts gifted shares of stock in the Youngblut Farmland Corporation to their children. (Exh. 13, App. 158-163). The purpose of making those gifts was to transfer the wealth of that

corporation to the next generation, in order to avoid the tax consequences of having to sell that farm at some point in time or to transfer it upon death. (Tr. 432:5-10, 434:3-25, App. 501, 503). Over the years, Earl and Agnes transferred additional stock to their children but always retained majority interest. (Exh. 13, App. 158-163). Earl and Agnes remained actively involved in YFL until 2012. (Tr. 78:20-25, 81:21-82:16, App. 345, 348-349).

In 1999, after Leonard left the farm under threat of breaking up the corporation, Earl and Agnes went to their CPA, Don Weber. The purpose of the visit was to establish an estate plan and a business succession plan. (Tr. 432:15-433:15, App. 501-502; Exh. 29, App. 235-239). Their intent was to keep the farm corporation viable after they died. (Exh. 29, App. 235-239). At that time, Earl expressed regret for gifting shares to their children because it made their business succession plan more complicated. (Tr. 734:14-25, App. 575). Don Weber prepared a letter to Earl and Agnes laying out the various options available for incorporating their business succession plan into their estate plan. (Exh. 29, App. 235-239). The very first paragraph, Don Weber stated, "Any estate plan that includes a business succession to the next generation makes it impossible to divide things equally." (Exh. 29, App. 235-239).

Earl and Agnes made a decision to have Harold succeed them in the operation of the farm corporation. (Tr. 435:15-21, App. 504). In order to accomplish the transfer of control of YFL, they consulted their lawyers in Waterloo. Earl and Agnes decided to give Harold additional shares of stock in YFL which would make him, except for the shares held by Earl and Agnes, the largest shareholder with more shares than Leonard and the other Youngblut children owned. In a memo prepared by the corporation attorney, Rick Morris memorialized Earl and Agnes's intent to have Harold take over the farm operation. (Exh. 20, App. 188).

In December of 2002, Earl and Agnes executed codicils to their existing wills. (Exh. 1, 2, App. 126-129). The codicils provided that all of their shares of YFL should go to Harold when they died, which would then make him the majority owner. (Exh. 1, 2, App. 126-129). Earl and Agnes never waivered from their position that Harold would take over YFL and continue the family farm business after their deaths.

Harold's Involvement with YFL

By the early 2000's, Harold assumed the management of YFL although Earl and Agnes were still actively involved in the business as majority shareholders. (Tr. 434:14-22, App. 503). Agnes continued to do all the bookkeeping for YFL until 2012. (Tr. 81:21-82:25, 446:16-447:20, App.

505-506). Because YFL continued to be run out of the home farm, Harold would see his parents almost every day. (Tr. 132:1-19, App. 379). Teresa, Earl and Agnes's oldest daughter, also spent a significant amount of time at their parents house because she had purchased the chemical business from her parents. (Tr. 504:16-505:21, App. 519-520). Teresa operated the chemical business at the home farm. (Tr. 502:5-20, App. 517).

During the 2000's, Harold, individually, became involved in other business ventures. He formed a corporation known as Deer Creek with the purpose of purchasing commercial real estate. With the approval of his parents, YFL made the initial purchase of property that was transferred to Deer Creek. (Tr. 107:12-108:17, App. 365-366). Earl and Agnes were involved in all of Harold's business ventures and approved the involvement and investment of YFL. (Tr. 627:11-25, 628:12-25, App. 557-558). As Rick Morris testified, Earl was an astute businessman who served on the board of a bank for a number of years. (Tr. 628:17-22, App. 558).

Changes to Estate Plan and Buyouts

In 2010, YFL entered into a stock redemption agreement with Earlene to obtain her shares. (Exh 510, App. 248-249). At the time, Earlene had become ill and Agnes approached Earlene with the buyout agreement. Harold worked with Don Weber to determine the value of Earlene's shares.

(Tr. 139:6-18, App. 381). The stock purchase agreement included a valuation of YFL's assets and liabilities in order to come up with a value for Earlene's stock, which was $160,279.00. (Exh. 510, App. 248-249).

The value paid for Earlene's stock was more than what Earl wanted to pay. This was due to the significant increase in farmland. Realizing that YFL and Harold as its successor, would need to buy the remaining shares from their other 10 children, Earl and Agnes decided to leave the South Farm, which was not a part of YFL, to Harold to provide him an income for his family because the income from YFL would be needed to buyout the remaining shareholders. (Tr. 149:3-20, 376:21-377:15App. 384, 471-472).

In 2011, Earl and Agnes executed new wills that provided:

- All shares to Harold;
- South Farm to Harold;
- Residual to remaining children, except Harold.

(Exh. 9, 10, App. 130-151).

In 2013, Rita approached her parents and Harold about redeeming her shares of YFL. This prompted discussion among the other daughters about redeeming their shares. In May 2013, Rita and Nancy both sold their shares back to YFL for $250,000. (Tr. 147:14-23, App. 382; Exh. 14, 19, App. 164-165, 185-187). The remaining daughters, Mary, Marlys, Lisa, Theresa, and

Anita 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. (Tr. 147:23-148:8, App. 382-383; Ex. 15, 16, 17, 18, App. 166-184). The redemption contracts for Mary, Marlys, Lisa, and Anita were for $250,000, with $50,000 paid at time of execution and the remaining $200,000 paid over 10 years at 4% interest.[1] (Exh. 15, 16, 17, App. 166-180). Teresa's redemption contract was for $200,000 because she had less shares. (Exh. 18, App. 181-184).

Decline in Earl and Agnes's Health

By 2012, Earl and Agnes were becoming increasingly dependent. Earl was no longer able to drive the combine and was very limited in his activities on the farm due to his physical ailments. (Tr. 77:12-78:25, App. 344-345). At the same time, Agnes could no longer do the bookkeeping for YFL. (Tr. 81:21-82:12, App. 348-349).Their daughter Lisa Althof assumed the bookkeeping duties. (Tr. 82:7-14, App. 349). It was also discovered in 2012 that Agnes had terminal lung cancer. (Tr. 354:3-7, 508:17-19, App. 506, 521). By 2013, Agnes's cancer had metastasized to her brain. Agnes

[1] While some of the daughters were upset with the redemption price, the amount they received was nearly identical to what their shares were valued at under the valuation report prepared by Don Weber for Agnes's Estate. (Exh. 28, p. 27 ($656.29 minority share value x 374 shares = $245,452.46), App. 224).

went through 6 weeks of chemotherapy in late 2013. (Tr. 508:22-509:3, App. 508-509).

It was clear to those in the family their parents' time was shortening and it was at this time that Leonard began his campaign to get the South Farm.

Leonard's Threats Against YFL and Harold

On March 26, 2013, Leonard sent an email to his siblings that he labeled the "Family Togetherness Plan." (Exh. 21, App. 189-192). Leonard starts the email by stating, "I believe forgiveness and a change of perspectives might be a first step. Forgiveness, not necessarily absolution. Mistakes have been made in handling family relations and should be dealt with." Despite talking about forgiveness, in the very next paragraph, Leonard states he has retained an attorney and is "intending to file suit to remove the board of directors for malfeasance."[2] (Exh. 21, App. 189-192). Leonard admitted he had not retained a lawyer in March 2013. (Tr. 555:23-556:10, App. 542-543).

Leonard makes numerous accusations about his parents, claiming that YFL was a sham and tax shelter from its inception, stating Earl

[2] At the time of this email, the board of directors consisted of Earl, Agnes, and Harold. In effect, Leonard was threatening to sue his own parents.

discriminated against his daughters and values their shares less because they are females, and stating that Agnes has kept secrets and misled (the family) about Harold because she "has always been her favorite son[.]" (Exh. 21, App. 189-192).

In the email, Leonard also attacks Harold for his religious beliefs, stating:

> I have to believe it's the teachings of his religion, that enable him to commit the acts he's done. I've been told that only Mormon men can go to heaven outright. Their wives are only allowed in if their husband takes them there. The rest of us aren't worthy. I think that's why it's so easy to take advantage of others. If you perceive them as unworthy, then why not take advantage of them. Any follower of a religion who's founders believe it was right to marry ten and twelve year old girls to propagate the religion, must have a sense of nobility about them. That sense of nobility gives him the right to take what is not his to provide for his family. So maybe what he's done is okay in his point of view. Maybe he can't see it as wrong. (Ex. 21, p. 2, App. 190).

Leonard concludes by giving two options for Earl and Agnes's estate plan. Under the first option, Leonard gets the South Farm, the daughters get the home place and all shares of YFL, Harold gets the Peters Farm that he would have to sell to pay off some alleged debt Leonard believes he owes to YFL. (Exh. 21, p. 2, App. 190). Leonard's second option is to report YFL to the IRS and have YFL dissolved, which he claims is a possibility under the

lawsuit he intends to file if the board of directors doesn't step down. (Exh. 21, p. 3, App. 191).

Leonard also brought up a number of issues that he claimed to discover through real estate documents he obtained from Pacer that showed YFL was involved with assisting Harold in his other business ventures. (Tr. 599:22-600:3, App. 549-550; Exh. 21, App. 189-192). However, Leonard testified that he knew of YFL's involvement in these transactions when they occurred in 2004/2005 and later in 2008. (Tr. 706:24-708:25, App. 569-571). Nevertheless, Leonard did not ask Harold about these issues or share them with other shareholders. (Tr. 603:14-17, App. 551). Instead, Leonard brought them up in the course of trying to change Earl and Agnes's estate plan.

In December 2013, Harold discussed with his sister Teresa their concerns about Earl and Agnes's continued safety of living alone on the farm. Teresa and Harold decided to look into assisted living in Waterloo. Earl and Agnes agreed to move to Rosewood, where they had friends. (Tr. 509:12-511:2, App. 522-524). Harold and his family were involved with helping Earl and Agnes move to Rosewood. (Tr. 133:9-11, App. 380).

On the day, Earl and Agnes were to move out; Leonard came to their house and confronted Harold. Leonard started yelling and screaming at

Harold. Leonard accused Harold of being a thief, claimed Harold was stealing their parents' house, ranted about Harold's religion, and accused Harold's wife of being a gold digger. (Tr. 313:12-25, App. 448). Leonard claimed Harold was forcing his parents out and was going to call the sheriff to have Harold arrested. (Tr. 313:2-6, App. 448). Eventually, Earl told Leonard to get out of the house. (Tr. 313:17-19, App. 448). The incident left Agnes in tears. (Tr. 313:18-19, App. 448).

After Earl and Agnes moved into Rosewood, Teresa came to visit while Leonard was there and heard Leonard yelling at Earl and Agnes. (Tr. 518:18-20, App. 527). Teresa could see Earl and Agnes were stressed so she told Leonard to leave the apartment. (Tr. 517:12-519:12, App. 526-528). This occurred sometime between January and March 2014. (Tr. 520:2-6, App. 529).

In 2013, Earl and Agnes were discussing changes to their 2011 Wills with attorney Teresa Hoffman of the Beecher Law Firm. (Tr. 327:9-328:20, 389:20-23, App. 453-454, 476). Earl and Agnes met with Ms. Hoffman about a dozen times in 2013 and seven or eight time in early 2014. (Tr. 366:17-22, 393:11-16, 397:15-18, App. 468, 479, 481). Ms. Hoffman was aware of influence being exerted on Earl and Agnes. Ms. Hoffman testified that Earl and Agnes would often be in tears when discussing the discourse in

the family. (Tr. 423:21-424:9, App. 497-498). Ms. Hoffman also knew that Earl and Agnes were worried about the potential lawsuits Leonard was threatening and believed that Leonard would do what he could to hurt YFL. (Tr. 383:4-8, App. 473). Agnes also told Ms. Hoffman that Leonard had threatened to kill himself. (Tr. 412:17-21, 423:1-20, App. 489, 497).

Almost a year after Leonard first set forth his options for Earl and Agnes's estate plan, Leonard had not let up on his accusations and threats against Harold and YFL. On February 5, 2014, Leonard sent another email to his siblings. (Exh. 23, App. 193-195). In this email, Leonard continued to accuse Harold of committing illegal activity, taking personal funds from Earl and Agnes, and of being a tyrant. (Exh. 23, App. 193-195).

Most notably, the email contains two key points. First, Leonard starts the email by making his intentions clear:

> In regard to the So. Farm. I believe that it is an asset personally owned by Mom and Dad. Although it was promised to me years ago, to date the promise has not been kept. That promise is what has kept me from taking legal action years ago. The only way that I would accept it, would be for it to be willed to me. Wills are kept private until after the date of death. Wills can be changed at any time, until then. The changed (sic) of having a will declared invalid is very low. (Exh. 23, App. 193-195).

Leonard followed this demand by stating that if Earl and Agnes want "peace" they have to accept one of his three options with regard to his

threatened lawsuit against YFL. (Exh. 23, App. 193-195). The first two options sought Harold's removal from YFL and the third involved the dissolution of YFL. (Exh. 23, App. 193-195).

Leonard eventually approached Agnes with a "Letter of Intent" that he gave to her to sign if she wanted peace. (Exh. 25, App. 196). Leonard's letter of intent states that Agnes was to transfer her interest in the South Farm plus $125,000 to Leonard in exchange for his stock and Leonard's agreement to forego any rights to prosecute or remove any officers of YFL. (Exh. 25, App. 196).

On February 16, 2014, Lisa emailed Teresa Hoffman relaying that Agnes wanted to make changes to her will. With regard to the South Farm, Lisa wrote:

> Leonard Youngblut would receive the farm in Tama County that is currently be given to Harold Youngblut and Len would turn over his shares to Youngblut Farmland. They would also like Leonard to sign a legal and binding document stating that he will not contact the IRS, Attorney General *or take any legal action against Youngblut Farmland and Harold Youngblut*. Basically they want a gag order on Leonard.

(Exh. 41, App. 240-241) (emphasis added).

On March 7, 2014, Earl and Agnes signed new wills that gave Leonard the South Farm in exchange for his shares of YFL. (Exh. 11, 12, App. 152-157). Leonard's misrepresentations that he retained an attorney

and was going to sue YFL, threats of reporting YFL to the IRS despite no fraudulent activity, continuous baseless defamatory statements about Harold and his actions through YFL, and threatening that he could destroy the family farm corporation that meant so much to his parents finally paid off.

Following the execution of the 2014 Will, Earl stated to Harold, "they made me give the farm to Leonard." (Tr. 255:22-256:2, App. 425-426). Agnes's statement was more blunt: "I just want them to shut up and go away[.]" (Tr. 306:6-15, App. 446).

Estate Proceedings

Earl died on June 1, 2014 and then Agnes died the next day, on June 2, 2014. (Ex 506 p. 1, App. 242; Tr. 385:4-10, App. 474). Probate proceedings were opened for Agnes's Estate. Leonard had 9 months to exercise the option under the will. (Exh. 11, App. 152-154). Leonard was the only person who could exercise the option. (Exh. 11, App. 152-154). Leonard made no indication before the will contest deadline that he was going to accept it. In fact, Leonard previously stated that he believed his shares were worth more than $2,000,000, which was more than the value of the South Farm. (Tr. 728:7-10, App. 574; Exh. 506, p. 4, App. 245).

Harold's check for $1.00 did not net him $3,000,000. (Tr. 300:3-5, Tr. 622:16-22, 624:10-13, App. 444, 554, 556). Harold received Earl and

Agnes's shares of YFL in October 2014, which was part of the business succession plan that Earl and Agnes enacted back in 2002. (Tr. 622:16-22, 624:10-13, App. 554, 556).

Harold did not file a will contest. There was no communication between Harold and Leonard about a will contest or lawsuit. (Tr. 296:15-20, App. 440). Harold did promptly file a tortious interference claim in April 2015. (Petition, App. 7-10).

## ARGUMENT

### I. HAROLD'S TORTIOUS INTERFERENCE CLAIM IS NOT BARRED AS A MATTER OF LAW

#### Preservation of Error

Harold agrees that Leonard preserved error on the tortious interference with inheritance issue.

#### Scope and Standard of Review

This Court reviews the district court's ruling on a denial of a motion for judgment notwithstanding the verdict for corrections at law. *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5 (Iowa 2009). "A directed verdict is required 'only if there was no substantial evidence to support the elements of the plaintiff's claim.'" *Id.* (*quoting Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 472 (Iowa 2005)). Evidence is substantial "[w]hen reasonable minds would accept the evidence as adequate to reach the same

findings." *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008). If there is substantial evidence to support the plaintiff's claims, a motion for judgment notwithstanding the verdict should be denied. *Vogan v. Hayes Appraisal Assocs., Inc.*, 588 N.W.2d 420, 423 (Iowa 1999). The reviewing court must view "the evidence in the light most favorable to the party against whom the motion was made and takes into consideration every legitimate inference that may fairly and reasonably be made." *Id.*

### A. Iowa Jurisprudence Has Long Recognized Tortious Interference with Inheritance as an Independent Cause of Action

Harold Youngblut filed a claim against Leonard Youngblut for ***tortious interference with a bequest***. This action does not effect the distribution of property from Agnes's estate. It is a personal action against Leonard.

The Iowa Supreme Court first addressed this cause of action in *Frohwein v. Haesemeyer*, 264 N.W.2d 792 (Iowa 1978). In *Frohwein*, the Iowa Supreme Court stated:

> We have recognized the existence of actions in tort for wrongful interference with business advantage. *See Farmers Cooperative Elevator, Inc. v. State Bank*, 236 N.W.2d 674, 679 (Iowa 1975); *Clark v. Figge*, 181 N.W.2d 211, 214 (Iowa 1970). We can see no compelling reason for us to decline to extend this concept to a noncommercial context. Directed by the foregoing rationale, and in light of the above cited

> authorities we are persuaded that an ***independent cause of action for the wrongful interference with a bequest does exist*** recognizing as we do the difficulties attendant to recovery in such an action.

*Id*. at 795 (emphasis added).

Tortious interference with inheritance is based on the *Restatement (Second) of Torts*, which states:

> One who by fraud or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to others for the loss of the inheritance or gift.

*Restatement (Second) of Torts*, § 774B (1977). The essence of the claim is that an individual tortfeasor interfered with one's expected inheritance, which gives a right to recover damages against the tortfeasor. *Huffey v. Lea*, 491 N.W.2d 518, 521 (Iowa 1992). On the other hand, a will contest claim seeks to invalidate a will based on the testator's lack of capacity or that the will was a result of undue influence. *In re Estate of Huston*, 27 N.W.2d 26 (Iowa 1947).

Leonard has repeatedly argued that the claim for tortious interference with the bequest is merely a de facto challenge to the will. However, this argument has already been addressed and denied by the Iowa Supreme Court in *Frohwein*. The Court observed:

> In *Gigilos v. Stavropolous*, 204 N.W.2d 619, 621 (Iowa 1973), we said collateral attacks on an order admitting a will to probate usually are not permitted. However, the rationale we employed in *Gigilos* is inapplicable to the situation in this case since ***we don't view the law action (tortious interference with bequest) instituted by the plaintiff here as a collateral attack*** on the probate order although the allegations of plaintiff's petition in the law action could have been presented in a will contest. The plaintiff in this case based his law action on a claimed tortious interference with a bequest in his favor provided him in the prior will of the decedent Ella Koehler.

*Id*. at 795 (emphasis added). The Iowa Supreme Court has clearly stated that there is an ***independent*** cause of action for tortious interference with a bequest. The Iowa Supreme Court did not place any conditions on the independent cause of action.

The Iowa Supreme Court has continued to recognize a claim for tortious interference with a bequest as evidenced by the rulings in *Huffey v. Lea*, 491 N.W.2d 518 (Iowa 1992) and in *Turner v. Iowa State Bank & Trust Co. of Fairfield*, 743 N.W.2d 1 (Iowa 2007). In reference to the claim of tortious interference with a bequest, the *Turner* Court stated:

> In these claims, Turner alleges the co-trustees did not breach a duty owed to him as a beneficiary, but that the co-trustees tortiously interfered with the family settlement agreement and the lawsuit with his mother. If we assume for the purposes of this opinion Turner's claims of tortious interference are actionable under Iowa law, these are not breach-of-trust claims. Rather these are independent claims outside the purview of the trust code.*See Huffey v. Lea*, 491 N.W.2d 518, 520 (1992) (reaffirming that Iowa recognizes an independent action outside

> the probate code for tortious interference with a bequest). Therefore, these claims may not be subject to the one-year limitation contained in section 633A.4504(1). *See Frohwein v. Haesemeyer*, 264 N.W.2d 792, 793-95 (1978) (holding the tort of intentional interference with a bequest is an independent claim and not subject to the limitations period of the probate code).

*Turner*, 743 N.W.2d at 6.

In addition to the Iowa Supreme Court's continued recognition of the claim, tortious interference with inheritance has been well developed in Iowa Court of Appeals of decisions. *New Hope Methodist Church v. Lawler & Swanson, P.L.C.*, 791 N.W.2d 710 (Iowa Ct. App. 2010); *In re Estate of Bader*, 803 N.W.2d 672 (Iowa Ct. App. 2011); *Bronner v. Randall*, 867 N.W.2d 195 (Iowa Ct. App. 2015); *Shea v. Lorenz*, 869 N.W.2d 196 (Iowa Ct. App. 2015); *Stalzer v. Smith*, 886 N.W.2d 107 (Iowa Ct. App. 2016); *In re Estate of Boman*, 898 N.W.2d 202 (Iowa Ct. App. 2017); *Matter of Estate of Erickson*, 922 N.W.2d 105 (Iowa Ct. App. 2018); *Cich v. McLeish*, 2019 WL 1056804 (Iowa Ct. App. Mar. 6, 2019).

### B. Huffey Did Not Recognize Limitations on Bringing a Tortious Interference Action

Under Division I of his Brief, Leonard makes two misrepresentations of the holding in *Huffey*. First, Leonard asserts that *Huffey* does not establish a uniform rule that tortious interference claims are available regardless of

probate will proceedings. Brief, p. 33. However, this is precisely what *Huffey* held. *See* 491 N.W.2d at 521 (holding tort action is distinct from will contest because difference in evidence and damages). This holding was consistent with the Court's holding in *Frohwein*. *Huffey*, 491 N.W.2d at 524 (McGivern, CJ dissenting) (stating *Frohwein* held plaintiff does not have to bring a will contest first).

Second, Leonard argues that *Huffey* recognized limitations "on when the tort claim can be brought independently" and that the "availability of an independent tortious interference claim" depended on various factors. Brief, p. 34. This interpretation is the opposite of the holding in *Huffey*.

The issue in *Huffey* was whether a tortious interference action could be brought ***after a prior*** successful will contest action. *Huffey*, 491 N.W.2d at 522 ("no bright-line rule requiring that the two actions ***be brought together***.") (emphasis added). The issue ***was not*** whether "an independent tortious interference claim" was available as Leonard argues. Brief, p. 34.

Notably, the four factors listed in *Huffey* were not adopted by the Court but merely illustrated what other courts rely upon. *Huffey*, 491 N.W.2d at 522. In fact, the Court in *Huffey* explicitly refused to follow the holding from the cases that those factors came from. 491 N.W.2d at 521 ("We are aware that other jurisdictions have held that successful will

contestants cannot bring a subsequent action for tortious interference with inheritance rights. We believe these cases are either distinguishable or do not fit within the principles of our tort law.") (citations omitted).

As such, Leonard's attempt to apply the factors referenced in *Huffey* to Harold's claim is unpersuasive because Iowa has not adopted those factors.

### C. The Holding in *Villarreal* Does Not Effect *Frohwein* or Harold's Claim Against Leonard

Leonard argues that it is questionable whether *Huffey* is still good law citing to the dissent opinion in *Villarreal v. United Fire & Cas. Co.*, 873 N.W.2d 714 (Iowa 2016). The dissents reference to *Huffey* in a footnote related to the claim preclusion issue, specifically, bringing a subsequent tortious interference action after a successful will contest. *Villarreal*, 873 N.W.2d at 737, n.8 (Appel, J., dissenting). While *Villarreal* arguably could be construed as effecting *Huffey*, it does not effect *Frohwein* or Harold's claim in this case.

As stated in *Pavone v. Kirke,* 807 N.W.2d 828, 836 (Iowa 2011), in order to establish claim preclusion a party must show:

> (1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit

> could have been fully and fairly adjudicated in the prior case (i.e., both suits involve the same cause of action).

In *Frohwein*, as in this case, the second element cannot be established because there was no "final judgment on the merits in the first claim." As Leonard so aptly points out, "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[.]" In other words, Harold's tortious interference with inheritance claim against Leonard was his first claim.

For claim preclusion to apply to Harold's claim, Leonard argues:

> 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.

Brief, p. 42 (*citing* Villarreal, 873 N.W.2d at 729) (emphasis added). In other words, Leonard wants the tolling of the will contest deadline to be construed as a final judgment on the merits of any tortious interference claim.

In order to get to Leonard's desired result, the Court has to overturn *Huffey*, *Frohwein*, and all Court of Appeals cases that relied on them. This case does not warrant such a dramatic change to Iowa law.[3]

### D. Tortious Interference Does Not Allow One to Have His Cake and Eat it Too

Leonard argues that Harold's decision to not contest the will and instead file an action for tortious interference would allow Harold to receive the benefits under the 2011 Will and 2014 Will. This argument is unpersuasive for a number of reasons.

First, Harold is not permitted to recover the farmland through his tortious interference with inheritance claim.

> Tortious interference is an in personam claim which may result in a judgment against the wrongdoer to be paid from personal assets, rather than from the testator's probate estate, whereas a will contest is an action in rem which determines what will happen to the assets in the testator's probate estate.

Rebecca M. Murphy, Samantha M. Clarke, *A New Hope: Tortious Interference with an Expected Inheritance in Rhode Island,* 22 Roger

[3] "Courts adhere to the holdings of past rulings to imbue the law with continuity and predictability and help maintain the stability essential to society. From the very beginnings of this court, we have guarded the venerable doctrine of stare decisis and required the highest possible showing that a precedent should be overruled before taking such a step." *State v. Iowa Dist. Ct. for Jones County*, 902 N.W.2d 811, 817–18 (Iowa 2017) (citations omitted).

Williams U.L. Rev. 531, 535 (2017). As such, Harold could not obtain the benefits of the 2011 Will and 2014 Will through this action.

Second, the law does not allow for double recovery. *Farley v. City of Des Moines*, 203 N.W. 287, 288 (Iowa 1925). In *Bronner v. Randall*, plaintiff brought action to set aside a change of beneficiary change and a tortious interference action against defendants who procured the change. 867 N.W.2d 195 (Table) *15. The jury set aside the change of beneficiary, awarded loss of inheritance, and punitive damages. *Id.* The Court of Appeals held double recovery was not allowed on the setting aside of the change of beneficiary and loss of inheritance award since those amounts were for the same loss. *Id*. As such, Iowa case law already prevents one from having his cake and eating it too.

Third, Harold did not seek recovery of the entire value of the farmland. Instead, Harold submitted instructions that clearly establish he was not attempting to obtain a double recovery. In fact, the final jury instructions required the jury to take into account the amount Harold already received when calculating damages on the tortious interference claim. (*See* Jury Instruction No. 28 (Mar. 8, 2018), App. 90).

Fourth, the jury awarded Harold $396,086.88 in compensatory damages. (Verdict, App. 87-89). This was substantially less than Harold

sought for his loss of inheritance. (*See* Exh. 506, p. 4 (value of the South Farm), App. 245; Exh. 28 (stating minority stock value at time of Agnes's death), App. 224). As such, Harold only received about a third of his cake.

Based on the foregoing, tortious interference does not permit, nor did Harold seek, to have his cake and eat it. Instead, Harold's tortious interference claim allowed him to seek recovery of the loss in the value of inheritance that was a result of Leonard's tortious conduct.

### E. Leonard Should Not be Allowed to Profit From Threatening His Mother and Defaming His Brother

Leonard attempts to gloss over his own conduct and paint Harold in an unfavorable light by arguing Harold is attempting to get more than he is entitled to. However, Harold only sought to recover the loss he suffered from Leonard under a long established cause of action. On the other hand, Leonard's actions were truly reprehensible and he should not be permitted to benefit from such tortious conduct.

One important aspect of a tortious interference claim is that it allows for those responsible for tortiously interfering from being held accountable through a personal judgment, which includes recovery for emotional distress, pecuniary loss, consequential loss, and punitive damages. *Huffey*, 491 N.W.2d at 520. These damages are not recoverable under a will contest,

which was one of the reasons it is recognized as an independent tort. *Id.* at 521.

While the Court in *Huffey* emphasized the fact that a will contest fails to make the plaintiff whole based on these unrecoverable damages, these damages are equally important to ensure that the individual tortfeasor is held personally accountable for their conduct, which they may be able to avoid in cases involving only a will contest claim. As one commentator has summarized:

> Tortious interference offers an opportunity for litigants to recover directly from a bad actor, rather than from an estate. However, the source of a claimant's recovery is not the only difference between recovering in a civil action as compared to a probate action. A party successful in a civil case can receive more than just that to which he or she was entitled in a will contest. Specifically, courts have acknowledged that in pursuing a claim for tortious interference, it becomes possible for parties to obtain compensatory damages, attorneys' fees, emotional distress damages, and even punitive damages. This distinction from what a litigant may recover in a will contest is important because, as commentators have noted, without the existence of tortious interference, the realities of litigating a will contest may enable tortfeasors to reap the benefits of their bad acts, consequence-free.
>
> Consider this: if a testator executes a will benefiting two heirs, and one heir later convinces the testator to change the will in his favor using fraud, at the testator's death, the malfeasant heir can only benefit. The original will still benefits both heirs, so even if the later will is voided through a will contest because it was procured by fraud, the bad actor can still take under the will. Worse still, the bad actor's attorneys' fees will generally be

> paid by the estate. Arguably, then, the tortfeasor risks nothing by engaging in tortious conduct that interferes with a third party's expected inheritance.

Murphy, 22 Roger Williams U.L. Rev. at 567-68.

In addition, the probate code does not permit punitive damages. "Punitive, sometimes called exemplary, damages are well understood and serve a vital function in our tort system. They are not awarded as a matter of right, but only as a form of punishment and to deter others from conduct which is sufficiently egregious to call for the remedy." *Coster v. Crookham*, 468 N.W.2d 802, 810 (Iowa 1991) (*citing Northrup v. Miles Homes, Inc. of Iowa*, 204 N.W.2d 850, 861 (Iowa 1973)). It is difficult to envision a more important group in our society who we should seek to protect through deterring those individuals who would seek to take advantage of them.

In fact, the Iowa Legislature has recently codified the importance of protecting vulnerable elders through the enactment of the Elder Abuse statute, Iowa Code § 235F. The definition of financial exploitation almost mirrors the definition of tortious interference with inheritance. Iowa Code § 235F.1(8) ("Financial exploitation" relative to a vulnerable elder means when a person stands in a position of trust or confidence with the vulnerable elder and knowingly and by undue influence, deception, coercion, fraud, or extortion, obtains control over or otherwise uses or diverts the benefits,

property, resources, belongings, or assets of the vulnerable elder.") *with Huffey*, 491 N.W.2d at 521 ("The necessary proof in an action for intentional interference with a bequest or devise focuses on the fraud, duress, or other tortious means intentionally used by the alleged wrongdoer in depriving another from receiving from a third person an inheritance or gift.").

Limiting the tortious interference claims and precluding recovery of damages not available under the probate code would serve to protect those individuals who prey on the elderly by preventing them from being held directly accountable for their actions.

### F. Tortious Interference Does Not Eviscerate Iowa Code § 633.309

Leonard argues that permitting Harold's tortious interference claim would eviscerate Iowa Code § 633.309. However, *Frohwein* recognized tortious interference after the will contest claim was dismissed as untimely pursuant to Iowa Code § 633.309. *Frohwein*, 264 N.W.2d at 793. As such, the Supreme Court did not interpret Iowa Code § 633.309 as precluding this tort.

In addition, the Supreme Court first recognized tortious interference with inheritance over 50 years ago. If the legislature was concerned about how the Supreme Court interpreted Iowa Code § 633.309, they have had

time to act. *Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 688 (Iowa 2013) ("[W]e presume the legislature is aware of our cases that interpret its statutes. When many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation.") (citations omitted).

It is also important to note that a tortious interference claim is brought against an individual and not against the estate; allowing administration of the estate to proceed. As such, the purpose of Iowa Code § 633.309 remains unchanged. In fact, the tortious interference claim allows for the conclusion of the estate matter, which allows for distribution of assets to beneficiaries who normally would need to be included as interested parties in a will contest lawsuit. Iowa Code § 633.312 (requiring joinder of interested parties).

### G. Even Assuming Iowa Required an Exhaustion of Probate Remedies, This Case Would be an Exception

Leonard asks the court to overturn Iowa's longstanding precedent with respect to tortious interference causes and adopt the view that limits tortious interference cases to those where probate remedies are exhausted or are unavailable. However, based on the facts in this case a change in the law would not apply to this case.

No matter how bad Leonard wants to paint the facts of this case as involving a simple estate, it certainly is not. As Don Weber told Earl in Agnes in 1999, an estate plan involving a business succession plan makes things very difficult. (Exh. 29, App. 235-239). In addition to the business succession plan, the inclusion of the 9-month option and the no contest clause prevented Harold from pursuing a normal probate remedy.

1. Harold's Injury Did Not Arise Until After the 4-month Deadline

Under Agnes's 2014 Will, Leonard was given the option to inherit the South Farm in exchange for giving up his YFL shares. If Leonard decided to not exercise the option given to him under the 2014 Will, Harold would receive the South Farm and Leonard would retain his YFL shares. In other words, if Leonard did not exercise the option, Harold's inheritance would have been the same as it was under Agnes's 2011 will. (*Compare* Exh. 10 *with* Exh. 11, App. 141-154). As such, Harold continued to have the same expected inheritance until after Leonard exercised his option.

While one may argue that Harold should have known Leonard would have exercised his option based on the value of Leonard's stock and the farmland, this argument is unpersuasive. Prior to February 2, 2015, Harold had no way of knowing whether Leonard would exercise the option. In fact,

Leonard previously stated that the value of his shares was worth more than $2,000,000. (Tr. 728:7-10, App. 574). As such, Leonard believed his shares were more valuable than the South Farm (Exh. 506, p. 4, App. 245).

Harold was put into a Hobson's choice dilemma. Harold could have filed suit based on pure speculation about whether Leonard would exercise the option, running the risk of Leonard not exercising the option, which would result in Harold dismissing his lawsuit because there was no harm to him and then resulting in defending an action against the estate attempting to enforce the no-contest clause. If the no-contest was enforced, Harold was subject to lose not just an inheritance but also the business that he dedicated a majority of his life to continue. In other words, it would effectively destroy the business succession plan of YFL that was established by Earl and Agnes. Alternatively, Harold could wait and see what Leonard would do with the option and let the will contest deadline pass.

2. Leonard's Own Actions Necessitated the Tortious Interference Claim

Leonard had nine months from the date of Agnes's death to accept the option. Leonard could have accepted the option at any point after Agnes's death and learning of the option. The deadline for a will contest challenge to be brought was October 20, 2014. Leonard did not exercise his option under

the Will until February 2, 2015, nearly four months after the deadline to contest the will. (Exh. 604, App. 268-269). If Leonard was concerned about a will contest challenge, he should have exercised the option prior to the October 20, 2014 deadline. By doing so, Harold's harm would have accrued before the will contest deadline.

Instead, Leonard never made his intentions known, and he purposefully waited until the four months to run in order to prevent Harold from knowing whether he actually suffered a loss of inheritance under the will.

3. The No Contest Clause Alone Precluded Harold from Contesting the Will

Once the no contest clause was included in the will, it was a foregone conclusion that Harold would not be able to contest the Will. That was because Earl and Agnes's wills contained the succession plan for YFL. In other words, Harold's livelihood, his career, and all of his work he did with his parents for YFL was included in the will. As such, if Harold was only allowed to pursue probate remedies, Harold would not simply be risking his inheritance but would be risking his own livelihood. *See* Marianna R. Chaffin, *Stealing the Family Farm: Tortious Interference with Inheritance*, 14 San Joaquin Agric. L. Rev. 73, 81-84 (2004) (discussing the potential

issues involving family farm corporation successions and the use of a no-contest clause by the unscrupulous heir that prevents the other heirs from taking action to contest estate plan due to potential loss of their interest in the corporation). As such, Harold was left with only one option on how to recover the loss he suffered by Leonard's actions. *Id*. at 84 (tort of intentional interference gives recourse to wronged heirs to prevent unscrupulous heir from stealing the family farm).

In addition, there is sufficient evidence that the no-contest clause was part of Leonard's conduct to preclude Harold's action to obtain the farm. *DeWitt v. Duce*, 408 So.2d 216, 219 (Fla. 1981) (tortious interference allowed if "circumstances surrounding the tortious conduct effectively preclude adequate relief in the probate court.") While Teresa Hoffman testified the no contest clause was Earl and Agnes's idea to obtain "peace," however, the facts in the case lead to a different conclusion.

At the time the 2014 Wills were executed, Earl was 91 and Agnes was 89. Both were in assisted living and would only live a few more months. Further, none of Earl and Agnes's other wills contained any mention of a no contest clause. (Exh. 1, 10, 11, 639, 640, App. 126-127, 141-151, 152-154, 289-300, 313-324). In addition, Earl and Agnes never mentioned they wanted peace. (Tr. 306:16-17, App. 446). Instead, they told Harold that the

girls and Leonard believe Leonard should get the farm. (Tr. 306:10-15, App. 446). Eventually, Earl and Agnes both gave up. (Tr. 255:22-256:2, App. 425-426 (Earl stating, "They made me give Leonard the farm"; Tr. 306:6-15, App. 446) (Agnes stating, "I want them to shut up and go away."). Finally, Leonard's 2014 email makes specific reference to wanting the farm willed to him because they are difficult to contest. (Exh. 23, App. 193-195). This is sufficient evidence to conclude that the no contest clause was the product of fraud used to prevent Harold from contesting the will. *DeWitt*, 408 So.2d at 219.

## II. THE DISTRICT COURT DID NOT ERROR IN DENYING LEONARD'S MULTIPLE ESTOPPEL AFFIRMATIVE DEFENSES

### Preservation of Error

Harold agrees that Leonard preserved error on the this issue.

### Scope and Standard of Review

Harold agrees with Leonard that the scope and standard of review is for correction of errors at law.

### Argument

Each of Leonard's affirmative defenses relies on the premise that a tortious interference with a bequest claim cannot be maintained because Harold did not file a will contest. The Iowa Supreme Court has emphatically

stated that a tortious interference with inheritance claim is not a collateral attack on the probate of a will. *Frohwein*, 264 N.W.2d at 794-95 ("[W]e don't view the law action (tortious interference with bequest) instituted by the plaintiff here as a collateral attack on the probate order although the allegations of plaintiff's petition in the law action could have been presented in a will contest."). Because the Iowa Supreme Court has repeatedly held that a tortious interference claim is distinct from a will contest, the district court properly denied Defendant's Motion for Directed Verdict on all of Leonard's affirmative defenses.

### A. Harold's "Acceptance" of the Terms of 2014 Will Is a *Red Herring*

Leonard argues that the acceptance of the 2014 Will should be prevented because Harold would be allowed to accept the benefit of both the 2014 and 2011 Will. Brief, p. 47. However, the law already prevents any potential double recovery and tortious interference does not allow recovery of the South Farm. Further, there is sufficient evidence that the inclusion of the no-contest clause was part of the same scheme to interfere with Harold's inheritance.

### B. Equitable Estoppel Does Not Apply

The elements of equitable estoppel are (1) a false representation or concealment of material facts, (2) 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 or her prejudice and injury. *Merrifield v. Troutner*, 269 N.W.2d 136, 137 (Iowa 1978). Leonard has failed to present any evidence that could be considered strict proof of any of these elements. *State v. Raymond*, 119 N.W.2d 135 (Iowa 1963) ("Estoppel is not favored in law and strict proof of all its elements is necessary.").

Harold did not make a false representation. Harold stated he would not contest the will of Agnes. Harold did not contest the will of Agnes Youngblut. Therefore there cannot be a false representation as is required and one of the elements to have an enforceable estoppel. In addition, Leonard cannot argue that he relied on Harold's decision to not contest the will in deciding to exercise his option under the will based on the fact that the deadline to file a contest passed in October 2014 and Leonard did not exercise his option until February 2015.

Leonard cites to a passage from Will Contest § 8:24 that states: "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."

That proposition fails in this case for several obvious reasons:

1. No will contest was filed by Harold Youngblut.

2. There was no consent settlement by Harold with Leonard or anyone else regarding a will contest.

3. There was no release of the claim of tortious interference with a legacy or bequest by Harold at any time and no evidence of such a release or consent settlement involving Harold has been produced.

The cases cited by Leonard are distinguishable from the case at bar:

1. In *Bogenrief v. Law*, 271 N.W. 229, 232 (Iowa 1937), the defendant accepted a life estate in real estate under the will. He then gave a mortgage on the real estate and tried to renounce the life estate. In *Bogenrief*, the defendant accepted under the terms of the will and then attempted to renounce the bequest. In the present case, Harold Youngblut has not taken any action adverse to the estate. Harold Youngblut has only asserted an independent cause of action against parties other than the estate.

2. In *Hainer v. Iowa Legion of Honor*, 43 N.W. 185, 187 (Iowa 1889), the intervenor accepted one provision of the will and then attempted to challenge another provision of the will. Again, Harold Youngblut has not made any claims against the will. Harold Youngblut has only asserted an independent cause of action against the parties other than the estate.

3. In *Hart v. Worthington*, 30 N.W.2d 306, 313 (Iowa 1947), the plaintiff knew Mrs. Worthington built her coalhouse on his right-of-way. He made no protest. He later tried to take the coalhouse. The court ruled he was estopped from making a claim adverse to his prior conduct and silence when the house was erected. Again, Harold Youngblut has not taken an

> adverse action against the estate. Harold Youngblut brought an independent cause of action against parties other than the estate for the damages they have caused him by interfering with his bequest.

It should also be noted that each of the cases cited by Leonard were decided well before the Iowa Supreme Court's decision in *Frohwein v. Haesemeyer* to recognize a claim for tortious interference with a bequest.

Leonard attempts to make the argument that Harold somehow induced Leonard into transferring his YFL shares by transmitting $1 to Leonard. This argument is unpersuasive. The option was given to Leonard under Agnes's Will. Harold was not a party to the option. Harold had no ownership interest in the South Farm. There was no communication between Leonard and Harold about the option. Finally, Leonard filed a notice of transfer of his shares to Harold on February 2, 2015, exactly one month before Harold wrote the $1.00 check to Leonard (*See* Exh. 604, 606, App. 268-269, 273). Based on the foregoing, it is beyond explanation as to how Harold in any way induced Leonard into transferring his shares.

Finally, Leonard's whole argument in support of his equitable defenses ignores the defamation, threats, and fraudulent statements Leonard made towards his parents and against Harold. These intentional and tortious actions was how Leonard improperly obtained the South Farm from Agnes's

estate. In fact, the jury not only found that Leonard tortiously interfered with Harold's inheritance they also found his actions were malicious. (Verdict, App. 87-89). Simply put, Leonard's own tortious and malicious actions prompted Harold to file this lawsuit. As such, it would be unjust to allow Leonard to avoid liability through any of the equitable defenses he raised as affirmative defenses.

### C. Estoppel by Acquiesce and Waiver Do Not Apply

Estoppel by acquiescence applies when a person knows or ought to know of an entitlement to enforce a right and neglects to do so for such time as would imply an intention to waive or abandon the right. *Markey v. Carney*, 705 N.W.2d 13, 21 (Iowa 2005). It 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. *Id*. Leonard failed to generate sufficient evidence of any of the elements to support this affirmative defense.

Leonard argues the first element is satisfied because Harold knew all the facts of his claim, was aware of his right to challenge the will before the deadline under Ch. 633, and was aware of his rights to bring a tortious interference with bequest claim. While Harold was aware of the will contest

deadline, at the time the deadline to contest the will had passed, Leonard had not exercised his option to receive the South Farm under Agnes's Will. Further, there was no affirmative statements by Leonard to Harold that he intended to exercise the option prior to the will contest deadline passing. As such, Harold did not know all the material facts. In addition, Harold testified that he was not aware of a claim of tortious interference with inheritance until he met with lawyers in Des Moines in the spring on 2015.

Similarly, Leonard cannot establish the second element of the claim because Harold was not "inactive" for a considerable amount of time. As Leonard points out, Harold filed this lawsuit in April 2015, only a few months after Leonard exercised his option to receive the South Farm. In comparison, the Court in *Markey* found that estoppel by acquiescence did not apply where the individual remained inactive with regard to their claim for over 4 years. *Markey*, 705 N.W.2d at 21. As such, the mere passing of a few months is insufficient to establish the second element of Leonard's estoppel by acquiescence affirmative defense.

Finally, Leonard argues the third element is established based on Harold's $1 check. Again, Leonard, not Harold, had control over the option, as shown by the following facts: 1) Harold was not a party to the option; 2) Harold had no ownership interest in the South Farm; 3) Leonard was the

only individual who could exercise the option; and 4) Leonard exercised the option a month before Harold wrote the $1 check.

Based on the foregoing, the district court properly denied Leonard's motion for directed verdict on the estoppel by acquiescence affirmative defense.

**D. Judicial Estoppel Does Not Apply**

There is no inconsistency in Harold's position under the decision in *Frohwein*, 264 N.W.2d at 794-95. ("[W]e don't view the law action (tortious interference with bequest) instituted by the plaintiff here as a collateral attack on the probate order although the allegations of plaintiff's petition in the law action could have been presented in a will contest.").

**E. Statute of Limitations Did Not Run**

Harold's claim is not barred by the statute of limitations because this is not a will contest. Leonard cites to no authority to support his position that the statute of limitations in a tortious interference case is the same as in a will contest.

## III. THE DISTRICT COURT PROPERLY DENIED LEONARD'S APPLICATION FOR A PRO TANTO CREDIT

Preservation of Error

Harold agrees Leonard preserved error on the pro tanto credit issue.

Scope and Standard of Review

Harold agrees with Leonard that the scope and standard of review is for correction of errors at law.

### A. Leonard's Failure to Plead an Entitlement to the Pro Tanto Credit as an Affirmative Defense is Fatal

Leonard is not entitled to a pro tanto credit in this matter because he failed to plead pro tanto credit as an affirmative defense and has not presented any evidence that a credit is necessary to prevent Harold from obtaining a double recovery. "The burden is on the party seeking to reduce its liability by the settlement amount and ***must be pleaded as an affirmative defense***.... This party ***must show*** that 'without such a credit the plaintiff would receive more than full compensation for [the] injuries.'" *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 773 (Iowa 1999) (*quoting Ezzone v. Riccardi*, 525 N.W.2d 388 (Iowa 1994)) (emphasis added).

Leonard never included an affirmative defense for a pro tanto credit in any of his answers or motion to amend and assert additional affirmative

defenses. (*See* Answer, Affirmative Defenses, Counter Claims, and Jury Demand (May 5, 2015), App. 11-15; Answer to Amended Petition, Affirmative Defenses, Counter Claims, and Jury Demand (June 15, 2015), App. 18-21; Defendants' Leonard Youngblut and Rita Rogers Motion to Amend Answer, Affirmative Defenses, and Counter Claims Per Iowa Rules of Civil Procedure 1.402(4) (July 25, 2016), App. 22-23, Supp. App. 4-7; and Motion to Amend Affirmative Defenses (Sept. 18, 2017), App. 60-62).

Leonard does not deny he failed to plead a pro tanto credit. Instead, Leonard argues his reference to a pro tanto credit in his trial brief alleviates his failure to plead the pro tanto credit as an affirmative defense. Brief, p. 55. Leonard cites to *Ezzone*, where the Supreme Court allowed the pro tanto credit to apply where the defendant requested it "in a memorandum filed with the court." *Ezzone*, 525 N.W.2d at 402. However, the pro tanto credit was only allowed in *Ezzone* because the plaintiffs did not argue that the memorandum was inadequate as a pleading at the trial court level. *Id*. This was not the case here.

Unlike the plaintiffs in *Ezzone*, Harold did attack Leonard's failure to plead pro tanto credit as an affirmative defense. (*See* Resistance to Defendant's Application for Pro Tanto Credit (Mar. 16, 2018), App. 92-95). As such, the holding in *Ezzone* supports Harold's position that the pro tanto

credit should be denied. *See* ***Ezzone***, 525 N.W.2d at 402. ("Under ordinary circumstances plaintiffs' position would be sound. Parties urging an affirmative defense cannot rely on opposing parties to alert them of their burden to plead and prove it.")

Due to his failure plead pro tanto credit as an affirmative defense Leonard is precluded from receiving the benefit of a setoff under pro tanto credit rule.

### B. The Amount of Harold's Recovery Precludes Pro Tanto Credit

Assuming *arguendo*, that proper notice of requesting a pro tanto credit was asserted as an affirmative defense, Leonard still is not entitled to a pro tanto credit. Under Iowa law, the burden is on the party seeking to reduce its liability to show that without such credit a plaintiff would receive more than full compensation for his loss. *Revere Transducers, Inc.*, 595 N.W.2d at 773; *Jamieson v. Harrison*, 532 N.W.2d 779, 782 (Iowa 1995) (*citing Thomas v. Solberg*, 442 N.W.2d 73, 74 (Iowa 1989) (pro tanto credit rule is based on the policy "that the plaintiff should receive no more than has been lost as the result of some tortious act.")). Here, the amount of jury verdict alone precludes Leonard from receiving a pro tanto credit based on prior settlements.

Leonard has the burden to prove a pro tanto credit should be applied yet he fails to discuss the how Harold would be unjustly enriched if the pro tanto credit is not applied. This was the reason pro tanto credit was denied by the trial court. (Ruling on Post-Trial Motions and Judgment Entry, p. 1, App. 121 ("The court has reviewed the evidence presented at trial, particularly the evidence of the values of land and stock. Leonard Youngblut did not prove that without the application of the pro tanto credit Harold Youngblut would receive more than full compensation for his damages.")). While Leonard has again failed to meet his burden, the damages sought versus the damages awarded establish that a pro tanto credit should not apply.

In this case, Harold sought damages for the value of the inheritance he would have received but for Leonard's tortious interference. At trial, evidence was presented that but for Leonard's intentional interference, Harold would have received the South Farm (valued at $1,697,000.00)[4] less the value of stock he received from Leonard (valued at $376,710.46)[5]. As such, Harold's total loss of inheritance damages was $1,320,289.54. In

[4] *See* Exh. 506, p. 4, App. 245.

[5] *See* Exh. 28, p. 27, App. 224.

comparison, the jury's award for his loss of inheritance damages ($396,086.88) plus the settlements ($80,000) totaled $476,086.88.

Since the combined amount of the judgment and settlements was less than Harold's total damages, there was no double recovery and the pro tanto rule does not apply. *Jamieson*, 532 N.W.2d at 782-83 (*citing Waukon Auto Supply v. Farmers & Merchants Savings Bank*, 440 N.W.2d 844, 851 (Iowa 1989) (plaintiff sustained losses of $35,000, settled with one party for $5,800 and received a judgment for $25,160.79; held no double recovery because total of settlement and judgment ($30,960.79) was less than $35,000 damages)).

## CONCLUSION

Plaintiff-Appellee requests that this Court affirm the District Court's rulings on Defendant's Motion for Summary Judgment, Motion for Directed Verdict and Motion for Judgment Not Withstanding the Verdict.

## REQUEST FOR ORAL ARGUMENT

Plaintiff-Appellee Harold Youngblut requests oral argument on all matters herein.

## CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) and 6.1103(4) because this Brief contains 11,320 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman size 14 font.

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## CERTIFICATE OF FILING AND SERVICE

I certify that on the 25th day of July, 2019, I e-filed this document with the Electronic Document Management System with the Appellate Court. The following counsel will be served by Electronic Document Management System:

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