IN THE SUPREME COURT OF IOWA
No. 19–1994

APPEAL FROM THE
POLK COUNTY DISTRICT COURT
HON. COLEMAN McALISTER, JUDGE PRESIDING
Polk Co. Law No. Case No. CVCV051446

COMMERCE BANK, Plaintiff/Appellees

vs.

ROBERT R. McGOWEN, Defendant/Appellant

DEFENDANT/APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE I: THE DISTRICT COURT ERRED IN DENYING McGOWEN'S MOTION TO PARTIALLY EXEMPT FUNDS FROM GARNISHMENT BECAUSE HIS DEFERRED COMPENSATION PAYMENTS ARE EXEMPT UNDER IOWA CODE § 627.6(8)(e).

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RESPONSE TO COMMERCE BANK'S FACT STATEMENTS

As a preliminary matter, McGowen follows herein the shorthand references designated in his opening brief, unless otherwise noted, and incorporates the same in its entirety.

The Bank subtly alters the language of the Plan purpose in stating the deferred compensation payments are "intended as a 'reward' to former shareholders for promoting 'the growth, profitability, and long-term success of the firm.'" (Bank Br. at 9). This inaccurately collapses the two separately stated purposes of the Plan: first, to incentivize shareholder employees "to promote the growth, profitability and long-term success of the Company"; and second, "to reward and recognize a long tenure of service to the Company as a shareholder." (App. 78 (Ex. 1, Art. 1.1)). For example, long-term service is directly and separately encouraged by the fact that both categories of payments McGowen receives under the Plan (Type 1 and Type 2A) are based on an increase in benefits for each year worked, up to a maximum cap. (App. 78-79, 81, 88 (Ex. 1, Art. 2.2, 3.2, and Schedule 1)).

To the extent the Bank's summary of selected portions of the district court's Ruling denying McGowen's exemption claim seeks to imply a different characterization than what the Ruling states in its entirety, McGowen

disputes the same and encourages a full reading of the quoted portions in context.

McGowen disagrees with the Bank's claim that the district court did not consider whether the payments were "on account of illness, disability, death, age, or length of service." (Bank Br. at 16). McGowen also disagrees with the Bank's characterization of his Rule 1.904 motion to enlarge or amend. (*Id.*) McGowen refutes the same in addressing below the Bank's preservation of error argument.

Additional factual issues are addressed as necessary in the Argument.

ARGUMENT

ISSUE I: THE DISTRICT COURT ERRED IN DENYING McGOWEN'S MOTION TO PARTIALLY EXEMPT FUNDS FROM GARNISHMENT BECAUSE HIS DEFERRED COMPENSATION PAYMENTS ARE EXEMPT UNDER IOWA CODE § 627.6(8)(e).

Preservation of Error

The Bank's preservation of error argument is unfounded. Iowa's rules on error preservation "are not designed to be hyper technical." *Griffin Pipe Prods. Co. v. Bd. of Review*, 789 N.W.2d 769, 772 (Iowa 2010) (finding party's challenge "adequate to put the board on notice of the nature of the protest"). "If the court's ruling indicates that the court considered the issue

and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)). For example, regarding the issue of nuisance involving a rezoning permit, the Iowa Supreme Court found error preserved where plaintiffs alleged the same in their petition for certiorari, even though the district court did not specifically rule on the same, because it "assume[d] from the unfavorable judgment that the issue was determined adversely to plaintiffs." *Montgomery v. Bremer Cty. Bd. of Sup'rs*, 299 N.W.2d 687, 697 (Iowa 1980) (internal citations omitted).

McGowen consistently and repeatedly asked for a ruling that the payments he receives satisfy the second step of the exemption analysis in that they are "on account of" length of service and/or age. (*See* App. 7-8 (Motion at 3-4) and App. 30-31, 34-35 (Reply brief at 4-5, 8-9)). Contrary to the Bank's arguments, McGowen's reconsideration request expressly included this issue within its scope; he did not focus "exclusively on the first part of the two-tiered analysis," as Bank claims. (*See* Bank Br. at 17-18).

First in his reconsideration request, McGowen specifically noted that the district court "did not acknowledge or rule on the following factual and legal theories" that he presented and asked the court to "amend and enlarge

its Ruling to specifically consider" them. (*See* App. 53 (1.904 motion at 2)). Second, in paragraph 6 following such statements, McGowen expressly identified the district court's failure to grant McGowen's original motion based on factors that include the issue of payment on account of illness, disability, death, age, or length of service. (*See, e.g.*, App. 54-55 (1.904 motion at 3-4)). There can be no question McGowen requested a determination on this issue.[1]

Nor can there be any real question whether the district court ruled on the same: it said no. In denying McGowen's motion for reconsideration, the district court expressly stated it had "carefully considered the legal arguments raised in the motion" (which necessarily includes the foregoing). (App. 57 (Order at 1)). The district court further stated, "To the extent the Court's prior ruling was unclear, the Court rejects the arguments made by Defendant." (*Id.*) The Bank does not dispute this and quotes the same language in its characterization of the order. (Bank Br. at 17). It is clear from the district court's unfavorable ruling towards McGowen that it decided the "on account

[1] Indeed, the Bank expressly states that "it is clear . . . the fourth [*Pettit*] factor relates to the second part of the test (*i.e.*, whether payments are 'on account of illness, disability, death, age, or length of service')."

of" issue adversely towards him. In short, McGowen preserved error and this issue is properly before the Court on appeal.

Standard of Review

The Bank's arguments regarding the standard of review on factual findings are grounded in the following language:

> Review in equity cases shall be de novo. In all other cases the appellate courts shall constitute courts for correction of errors at law, and **findings of fact in jury-waived cases shall have the effect of a special verdict**.

Iowa R. Civ. P. 6.907 (emphasis added) (also cited in Bank Br. at 18-19). Facially, this language does not support the Bank's advocated standard of review. This is not a "jury-waived" case, but rather a collection action based on a foreign judgment that the Bank filed in Polk County district court. (*See* App. 38-39 (Ruling at 1-2)). Within this collection action, McGowen never had the right to a jury or to waive the same, nor does the Bank argue otherwise. *Tindell v. Apple Lines, Inc.*, another primary basis for the Bank's standard of review argument, is not a collection action. *See Tindell v. Apple Lines, Inc.*, 478 N.W.2d 428, 430 (Iowa Ct. App. 1991). It did not involve application of exemption statutes but rather a run-of-the-mill breach of contract claim tried at law to the court. *See generally id.* Iowa courts additionally have stated an exception to this rule where, in arriving at the findings of fact, "the court erred

in its rulings on evidence or in other respects upon questions of law." *Hamilton v. Wosepka*, 154 N.W.2d 164, 166 (1967).

It would appear the Bank's intended implication in its standard of review argument is that this Court is somehow hampered in its own ability to interpret and construe the express language of the Plan for itself. McGowen disagrees. Nothing in the Bank's standard of review argument in fact limits the query before this Court. There aren't factual findings to which the Bank's advocated scope and standard of review apply anyway. As the Bank readily points out, the district court considered the Plan as "the only evidence before it." (Bank Br. at 15). It is undisputed the Plan is a contract under which McGowen has the right to the payments at issue. Both the interpretation and construction of the language in the Plan are legal issues before the Court:

> Interpretation is the process for determining the meaning of the words used by the parties in a contract. **Interpretation of a contract is a legal issue** unless the interpretation of the contract depends on extrinsic evidence. On the other hand, construction of a contract is the process a court uses to determine the legal effect of the words used. **We always review the construction of a contract as a legal issue**.

Bradshaw v. Cedar Rapids Airport Comm'n, 903 N.W.2d 355, 360 (Iowa Ct. App. 2017) (emphasis added) (quoting *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 435-36 (Iowa 2008)).

This is not a situation where, for example, deference to the district court's findings is tied to its ability to evaluate the credibility of witnesses firsthand.[2] This case is about interpreting and construing whether the Plan's express language supports applying the statutory exemption. This is squarely within this Court's review and ability, and is particularly important as the parties agree this case presents a substantial issue of first impression due to the absence of controlling case law on § 627.6(8)(e).

In short, there are no factual findings to which the Bank's advocated standard of review apply. To the extent the Bank's scope and standard of review arguments inform its framing of the issues on appeal, they should be rejected wholesale. McGowen is not asking this Court to illegally substitute its judgment for that of the district court but rather to interpret and construe the express language of the Plan under its authority to do so on review as a legal matter.

[2] By contrast, the only collection action the Bank relies on for its standard of review argument involved an evidentiary hearing where the district court heard and evaluated testimony on a variety of facts going to whether the debtor habitually used the vehicle in which he claimed an exemption to earn his living. *See Kelly v. Degelau*, 58 N.W.2d 374, 375 (1953).

Argument

McGowen's opening brief already addresses and rebuts a number of the arguments the Bank makes in its brief. Below, McGowen focuses on additional points the Bank raises regarding the two-part analysis for exemption under Iowa Code § 627.6(8)(e).

A. The Deferred Compensation Plan Is a "Similar Plan or Contract" Under Iowa Code § 627.6(8)(e).

McGowen maintains his arguments as to the significance of *Matter of Pettit*, 55 B.R. 394, 397 (Bankr. S.D. Iowa), which involved a debtor who successfully argued her interest in a profit-sharing plan with her employer was exempt. By contrast, the *Eilbert* case[3] is highly distinguishable on the facts. In arguing the *Eilbert* decisions are more persuasive than *Pettit* vis-à-vis their respective application by other courts, the Bank cites four bankruptcy cases that rely on *Eilbert* and argues they support the district court's reliance on the same. (Bank Br. at 26). The Bank further relies on some of these cases

[3] As in his opening brief, and for the convenience of the Court, McGowen continues to use shorthand references "*Eilbert (B.A.P.)*" and "*Eilbert (8th Cir.)*," respectively, in citing *Eilbert v. Pelican*, 212 B.R. 954, 958 (B.A.P. 8th Cir. 1997), affirmed in *In re Eilbert*, 162 F.3d 523 (8th Cir. 1998). To refresh the Court's memory, Eilbert was an elderly woman who inherited a substantial sum from her husband's estate. She used it to buy a single premium variable annuity in an effort to protect the money from creditors. She lost her argument that the monthly payments were exempt from execution under the statute at issue. (*See* McGowen opening br. at 13-14).

elsewhere in its brief. Accordingly, McGowen addresses these cases in turn below.

1) *In re Andersen*, 259 B.R. 687 (B.A.P. 8th Cir. 2001):

It is unclear why the Bank highlights this bankruptcy case for the claimed robustness of *Eilbert*. **It actually illustrates an instance where the debtor received an exemption even though some of the *Eilbert* factors did not cut in favor of it.** *See* 259 B.R. at 690 (disagreeing with the district court's application of *Eilbert* and reversing denial of exemption). It involved an annuity purchased with a single payment from inheritance. On appeal, the B.A.P. actually agreed with Andersen that her monthly payments were exempt under 11 U.S.C. § 522(d)(10)(E), which covers the debtor's right to receive "a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."[4] *Andersen,* 259 B.R. at 690.

The key dispute was whether the debtor's right to payments were "in the nature of an annuity or similar plan or contract . . . ." *Id.* Although the court used the *Eilbert* factors to inform its analysis, the court found in the

[4] The element of reasonable necessity for support, which is the major difference from the Iowa statute, was not at issue. *Andersen*, 259 B.R. at 691.

debtor's favor even though two of the *Eilbert* factors cut against finding an exemption (contributions over time and contributions by others). *Id.* at 692. The court found it more significant that the debtor bought the annuity in lieu of being able to get pension or retirement benefits through her employer. *Id.*

This undermines the Bank's (and the district court's) emphasis on the factors of contributions over time and contributions in applying *Eilbert* to deny McGowen's exemption. If anything, the *Andersen* case supports McGowen's argument that these factors (which *Pettit* does not highlight) are not hard-and-fast requirements upon which qualification for the exemption turns.

2) *In re Vickers*, 408 B.R. 131 (Bankr. E.D. Tenn. 2009)

Similar to the *Andersen* case above, on which the *Vickers* court relies, *Vickers* is also a case where the debtor successfully claimed an exemption under state law similar to that in Iowa Code § 627.6(8)(e). The court analyzes factors similar to *Eilbert* without much discussion of the case except to distinguish the result in *Eilbert. Vickers*, 408 B.R. at 141. This hardly proves that *Eilbert* should exclusively control all analyses of exemption in section 627.6(8)(e).

3) *In re Sims*, 241 B.R. 467 (Bankr. N.D. Okla. 1999):

To be sure, the *Sims* court found *Eilbert* "of some assistance" in a matter of first impression as to whether a debtor could properly claim an exemption under Oklahoma law in the beneficial interest the debtor inherited in his late father's individual retirement account. *See Sims* 241 B.R. at 469-70, 471-72. The *Sims* court finds in the negative and emphasizes that it will not go beyond the legislative intent in the exemption statute. *Id.* at 472. However, there is no discussion of the *Eilbert* factors that the district court in the present case relied on in denying McGowen's exemption motion, nor is the factual situation even remotely analogous to McGowen.

4) *In re Weidman*, 284 B.R. 837 (Bankr. E.D. Mich. 2002):

Weidman is yet another case involving an inheritance. Similar to the widow in *Eilbert*, the *Weidman* court denied the debtor's claimed exemption in a single premium annuity purchased with the inheritance. It found this did not meet the factors set forth in *Eilbert,* which informed its analysis under § 522(d)(10)(E). None of this mandates exclusive application of *Eilbert* factors to the instant case, and *Weidman* is similarly factually distinguishable.

The problem with the district court's ruling is not that it included *Eilbert* within the scope of its analysis, but rather that it essentially used *Eilbert* exclusively, when other more factually analogous case law was

available and more persuasive as applied to the assets at issue here. (*See* McGowen Opening Br. at 12-17). Of the four *Eilbert* factors, (contributions over time; contributions by others; return on investment; and control over the asset), the district court already (and correctly) found that the control over the asset factor weighed in McGowen's favor. (App. 49 (Ruling at 12)).

The first two *Eilbert* factors concerning contributions did not weigh in favor of exemption in *Andersen,* as detailed above, yet the court awarded the exemption anyway because the payments at issue were part of a long-term retirement strategy. *See Andersen,* 259 B.R. at 692. That is more similar to McGowen, whose participation in the Plan and implied reliance on it as a long-term strategy in the event of disruptive events (as evidenced by the text of the Plan) began in 1993. (*See* App. 78-88 (Ex. 1)). Meanwhile, the third factor (return on investment) was not even significant enough to get mentioned when the Eighth Circuit reviewed the B.A.P. ruling. *See generally Eilbert (8th Cir.),* 162 F.3d 523. And, the Plan does provide for an increase in benefits for each year worked, up to a minimum cap, for both categories of payments McGowen receives under the Plan (Type 1 and Type 2A). (App. 78, 78-79, 81, 88 (Ex. 1, Art. 2.2, 3.2, and Schedule 1)).

The point is that *Eilbert* is not and should not be the sole rationale and exclusive determinant of what should factor into the Iowa courts' analysis of

whether McGowen's payments under the Plan are exempt under § 627.6(8)(e). The district court erred in doing so and for all the other reasons set forth in McGowen's opening brief. The courts need "some attitude in treating varying factual situations under this exemption section." *Pettit*, 55 B.R. at 397 (positing this as the legislative rationale for including the catch-all language "similar plan or contract").

The Bank's argument that McGowen's payments under the Plan would not even qualify under the *Pettit* factors is unavailing. The Bank seizes upon a number of factual findings the *Pettit* court made (Br. at 36) and argues the exact same characteristics must be present here for McGowen's payments to qualify. This is contrary to the *Pettit* court's ruling. The *Pettit* court expressly states that "[a]ny plan or contract exhibiting" the factors on which McGowen relies "should be exempt." *Pettit*, 55 B.R. at 398. The court's legal analysis does not require the factual characteristics the Bank now attempts to require of McGowen.

Without conceding they were required, McGowen further takes issue with the Bank's blanket claim that all the other claimed characteristics in *Pettit* were "absent" from McGowen's Plan. This simply is not true. For example, the fact the profit-sharing plan in *Pettit* was "intended to provide retirement *and other benefits for the sole and exclusive benefit of the Bank's employees*,"

(55 B.R. at 395 (emphasis added)) does not cut against McGowen. His Plan was likewise intended "for the exclusive benefit of [the Firm's] shareholder employees," like him. (App. 78 (Ex. 1, Art. 1.1)). Moreover, McGowen's interest in the payments at issue were fully vested like in *Pettit.* His Type 1 benefits vested when earned. (App. 81 (Ex. 1, Art. 3.1)). His Type 2A benefits were fully vested given that he had been at the Firm for more than 20 years of service. (*See, e.g.*, App. 81, 78 (Ex. 1, Art. 3.2 and front page (noting 1993 as the original date of the Plan)).

It is also worth noting the *Pettit* court's analysis of characteristics of pensions (which concludes that "benefits under an exempt pension plan are generally not available until a time when the beneficiary's earning capacity is limited") and annuities (which concludes that "An annuity, therefore, is like the common pension plan in that access to the annuity fund is restricted by limiting conditions (i.e. retirement, disability, death, etc.)."). *Id.* Here, this overlaps with three of the triggering events in McGowen's Plan (turning 67, which is a common age for retirement; disability; death). (App. 82-83 (Ex. 1, Art. 4.1)). As the district court properly concluded, the existence of two other triggering events are (separation from service and sale of assets) does not favor a finding that the payments are not exempt. (App. 49 (Ruling at 12)).

For all the foregoing reasons and those in McGowen's opening brief, the Court should find that the district court erred in finding that McGowen's payments did not satisfy the first step of the exemption analysis.

B. McGowen Receives Payments Under the Plan "On Account of Illness, Disability, Death, Age, or Length of Service," As Required Under Iowa Code § 627.6(8)(e).

McGowen strongly disagrees with the Bank that this issue is not properly before the Court, based on his preservation of error argument outlined above. Accordingly, he maintains the Court can reverse the district court's ruling finding that McGowen did not satisfy the "on account of" language in part two of the analysis and conclude as a matter of law that McGowen's Plan payments meet this language.

If the Court finds otherwise, but nonetheless grants McGowen's request to reverse the district court's determination on part one of the exemption analysis and finds that his Plan payments qualify as a "similar plan or contract," McGowen respectfully asks that this Court remand on the issue of whether part two is satisfied. McGowen further requests that this Court provide direction concerning the legal interpretation of this aspect of the statute given that there are no other Iowa cases interpreting § 627.6(8)(e) in this context.

Below McGowen addresses the merits of the Bank's arguments.

The Bank argues McGowen receives the payments on account of relinquishing his shares, not "on account of age." This argument is unsupported and splits hairs. The Bank claims reliance on an "explicit finding" of the district court to such effect. The Bank misconstrues this language. After setting forth the triggering events for payments under the Plan, the district court wrote: "Though McGowen, now 68, continues to work for the Firm, he was removed as a shareholder due to his age, thereby triggering payment of his Type 2A funds." (App. 43 (Ruling at 6)).[5] Nothing in the Plan provides for "removal as a shareholder" to be a triggering event to receive payment. (*See* App. 82-83 (Ex. 1, Art. 4.1)). To the extent the district court implies in any way that removal as a shareholder was a triggering event (which McGowen does not concede), this was clear error as there is no evidence in the record to support this. The only legal interpretation/construction of the Plan's plain language is that removal as a shareholder was *not* an authorized triggering event.

[5] To be clear, the triggering events are the same for all vested payments under the Plan (App. 82-83 (Ex. 1, Art. 4.1)), so the same is true of McGowen's Type 1 payments. There is no dispute McGowen receives both Type 1 and Type 2A payments under the Plan and that his exemption claim requested a determination under § 627.6(8)(e) for both payment types. (*See, e.g.*, App. 10, 12 (Bank's brief opposing exemption at 1, 3 (acknowledging same)) and App. 7-8 (McGowen's motion to exempt at 3-4)). The district court denied McGowen's motion in its entirety. (App. 50 (Ruling at 13)).

There can be no real question that McGowen's age in fact triggered his right to receive payments under the Plan. That the Shareholder Agreement separately and simultaneously provides "a stock redemption shall occur" upon reaching age 67 does not amend or alter or otherwise inform the triggering events under the Plan at issue, which provides for a formal amendment process in the event the shareholders ever wanted to change this. (*See* App. 90 (Shareholder Agreement ¶9); 85 (Ex. 1, Art. 7.3)). The provisions of the Shareholder Agreement as to what other certain events mean regarding ownership of shares are irrelevant to the question before the Court, nor did the district court rely on or acknowledge them in any fashion.

As the Bank recognizes, three of the triggering events in McGowen's Plan are clearly included in the statutory language, i.e., age, disability, and death. The existence of the remaining two (separation from the Firm (beyond retirement), and sale of its assets) should not preclude a determination that McGowen's Plan payments satisfy the second step of the exemption analysis. McGowen previously set forth myriad reasons for this in his opening brief at 22-23 (detailing his case authority for the same in the context of whether McGowen has control over the events, which apply equally on the issue here).

Bank's reliance on other statements in *Eilbert* and *In re Huebner*, 986 F.2d 1222, 1225 (8th Cir. 1993) are neither dispositive nor particularly

persuasive given that those courts were specifically assessing annuity payments and not an employee plan like the one at issue here. It makes sense that an employee plan, unlike an annuity, would necessarily need to include within its scope what happens in the event of separation from the employer and/or sale of the employer. This is similar to language in the cases McGowen cites in his opening brief and references above. None of this changes that McGowen's age was in fact the triggering event.

McGowen's arguments are actually consistent with the court's ruling in *Huebner*, where the "key issue" was whether the debtor's ability to withdraw from the annuities was "substantially restricted." *Huebner*, 141 B.R. at 408. This overlaps with analysis of the debtor's control of the asset, which the district court properly found weighed in McGowen's favor. In other words, his ability to withdraw is substantially restricted. The *Huebner* court denied the debtor's exemption under § 627.6(8)(e) because his ability to make such withdrawals was "substantially *un*restricted, except for the penalties established by the tax code and the minor contractual restrictions established in one of the annuities." *Id.* (emphasis added). Unlike McGowen, Huebner's

right to receive payments had zero tie or restriction based on age. *Id.* at 407-08[6].

In analyzing whether payments are "on account of" one of the statutory events, courts have emphasized that a plan must be in existence and the payment triggered by an event contemplated by the plan. *See In re Huscher*, No. BKRTCY. 04-02200S, 2004 WL 2671705, at *3 (Bankr. N.D. Iowa Nov. 19, 2004). That is exactly what happened here. The district court erred in

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[6] The *Huebner* court also relies on *Pettit* for rationale similar to McGowen's arguments herein.

> The court is also guided by *In re Pettit*, 55 B.R. 394 (Bankr.S.D.Iowa), aff'd, 57 B.R. 362 (S.D.Iowa 1985), *In re Hutton*, 893 F.2d 1010 (8th Cir.1990), and *In re Lingle*, 119 B.R. 672, 676 (Bankr. S.D. Iowa 1990). These cases construe the language "similar plan or contract" in Iowa Code § 627.6(8)(e). **These cases reason that pensions and annuities have a common characteristic of control of the fund by someone other than the debtor and strong limitations on withdrawals from the fund**. *Hutton*, 893 F.2d at 1011; *Lingle* 119 B.R. at 676. The *Hutton* court found that the savings and investment plan involved in that case, which restricted withdrawal from the plan until retirement except for financial hardship, qualified as a "similar plan or contract," as the plan was controlled by debtor's employer and as there were strong limitations on withdrawal. *Id.* In *Lingle*, the court examined a retirement annuity established under ERISA and concluded that the annuity met the criteria for a "pension, annuity or similar plan or contract" under Iowa Code § 627.6(8)(e).

Huebner, 141 B.R. at 407 (emphasis added).

denying McGowen's argument he satisfied step two of the analysis and was thus entitled to exempt his payments under the Plan.

CONCLUSION

For all the foregoing reasons, this Court should find that all deferred compensation payments at issue are exempt under Iowa Code § 627.8(e). The judgment below denying McGowen's motion to partially exempt funds from garnishment should be reversed and order entered granting his motion in its entirety and for all other relief that this Court deems appropriate, including without limitation possible remand on the second step of the analysis, as noted above. Costs of appeal should be taxed to Bank.

REQUEST FOR ORAL ARGUMENT

Defendant/Appellant Robert R. McGowen respectfully requests to be heard orally upon the submission of this appeal.

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CERTIFICATE OF FILING

The undersigned hereby certifies that I, or someone acting on my behalf, filed the foregoing Final Reply Brief via the Iowa Judicial Branch EDMS system on April 6, 2020.

/s/ Kara M. Simons
Kara M. Simons

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of April, 2020, a copy of the foregoing Final Reply Brief was served via the Iowa Judicial Branch EDMS system to the attorneys of record, and the same will be served by mail on the 6th day of April, postage first-class prepaid, on the parties listed below:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This final reply brief complies with the type-volume limitation of Iowa R. App. 6.903(1)(g)(1) because this final reply brief contains 4,511 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.9903(1)(g)(1).

2. This final reply 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 space typeface using Times New Roman 14.

Dated: April 6, 2020

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