

IN THE SUPREME COURT OF IOWA

No. 19-0008

Jackson County No. ESPR020230

**IN THE MATTER OF THE ESTATE
OF FRANCIS O. GLASER, Deceased.**

**STATE OF IOWA ex rel. DEPARTMENT OF REVENUE,
Plaintiff,**

Vs.

**JUDY E. BOWLING, Fiduciary of the Estate of
FRANCIS O. GLASER,
Defendant.**

**JUDY E. BOWLING, Fiduciary of the Estate of
FRANCIS O. GLASER,
Plaintiff-Appellee,**

And

**STATE OF IOWA ex rel. DEPARTMENT OF REVENUE,
Plaintiff-Appellee,**

Vs.

**SHERRI M. KINDSFATHER,
Claimant-Appellant.**

**APPEAL FROM THE DISTRICT COURT OF JACKSON COUNTY
THE HONORABLE SEAN McPARTLAND**

Claimant-Appellant's Application for Further Review

Date of Filing of the Court of Appeals Opinion under review: July 22, 2020

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Iowa Court of Appeals erred when it failed to find that the Administrator was barred by the Doctrine of Unclean Hands from recovering the value of Kindsfather's real estate over and above the amount of the Iowa Department of Revenue's secured liens recorded prior to the decedent's transfer of the real estate to Kindsfather when there is no evidence of any other creditors of the estate.

II. Whether the Iowa Court of Appeals erred when it failed to reverse the district court order which set aside the transfers from Glaser to Kindsfather because Iowa Code sections 633.368 and 684.7(1) and *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 231 (Iowa 1926) allow relief from a fraudulent transfer "only to the extent necessary" to satisfy the DOR's income tax liens against the decedent proven at trial.

III. Whether the Iowa Court of Appeals erred when it failed to reverse the trial court's order setting aside the transfers of the house and two lots to Kindsfather when there was no evidence in the trial record proving the DOR's claims regarding income taxes which *had not been recorded as liens prior to the decedent's transfer of real estate to Shreve and Kindsfather*.

IV. Whether the Iowa Court of Appeals erred when it did not reverse the trial court's failure to grant Kindsfather the right to redeem the properties from a judgment "in rem" in favor of the Estate.

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STATEMENT SUPPORTING FURTHER REVIEW pursuant to I.R.App. P. 6.1103(c)(3).

1. Under the Doctrine of Unclean Hands, the Administrator of a decedent who fraudulently transferred real estate cannot recover the real estate transferred for the benefit of intestate heirs. *Shaw v. Addison*, 239 Iowa 377, 28 N.W.2d 816, 827 (Iowa, 1947).

2. Under Iowa Code section 633.368, the Administrator can recover assets which were fraudulently conveyed by the decedent only for the benefit of creditors (and not the heirs) of an intestate decedent but only “so far as necessary for the payment of the debts and charges against the estate of the decedent.”

3. Under Iowa Code section 684.1(2)(a), the Administrator cannot recover an asset claiming it was fraudulently transferred to the extent it was subject to a secured lien in favor of the creditor.

4. Under Iowa Code section 684.8(2) and section 684.7(1)(a), the court authority to fashion relief from a fraudulent transfer is limited to the “avoidance of the transfer...to the extent necessary to satisfy the credit’s claims”. See also, *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

5. Once the Iowa Department of Revenue [“DOR”] has been made whole, for its unsecured claims proven in trial, by a judgment in rem upon

the property fraudulently conveyed, the title to the property fraudulently transferred by the decedent to Kindsfather must remain in Kindsfather. See, *Schaefer v. Schaefer*, 795 N.W. 2d 494,498 (Iowa 2011).

6. A Declaratory Judgment should be entered establishing that the only secured income tax lien against the Jackson County farm is Doc. No. 08-75 in the amount of \$16,171.09 and that the only secured income tax liens against the house and two lots in Maquoketa, Iowa are Doc. No. 08-75 and Doc. No. 12-520 with a total balance of \$40,278.28.

7. Under Iowa Code section 684.1(2)(a), transfers of property subject to recorded income tax liens are not, by definition, fraudulent transfers to the extent of the lien because the DOR still has a lien upon the properties after the transfers and has not been financially harmed by the transfers of the properties. See, *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

8. If the Supreme Court determines there was evidence admitted at trial that proved the existence of unsecured income taxes owed by the decedent, then a Declaratory Judgment should be entered establishing a judgment in rem for the income tax obligations of the decedent over and above the amount of the secured tax liens (\$40,278.28).

9. A Declaratory Judgment should be entered that if a judgment “in rem” is entered against the real estate the decedent transferred to Kindsfather, that Kindsfather has the right to redeem the properties from said judgment in rem.

10. If the Supreme Court finds that the Administrator failed to prove in the trial record the existence unsecured income tax obligations of the decedent over and above \$40,278.28, then the Administrator’s Motion to Set Aside these Transfers must be denied.

APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED ON JULY 22, 2020.

COMES NOW SHERRI M. KINDSFATHER, CLAIMANT-APPELLANT, [“Kindsfather”] and pursuant to Iowa Code section 602.4102(4) and Iowa Rules of Appellate Procedure, Rule 6.1103(1)(a), hereby applies to the Iowa Supreme Court for Further Review from the adverse decisions of the Iowa Court of Appeals filed herein on July 22, 2020.

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

STATEMENT OF FACTS

The Complainant-Appellant, Sherri M. Kindsfather, ["Kindsfather"] is a resident of Maquoketa, Jackson County, Iowa.

The decedent, Francis O. Glaser, ["decedent" or "Glaser"] also resided in Maquoketa, Iowa. The decedent was not married and had no children.

Glaser died September 9, 2014 without a Will and his first cousin, Judy Bowling, was appointed Administrator of his estate.

on November 19, 2012, almost two years prior to his death, the decedent transferred the titles to Lots 11, 12 and 13 consisting of a house and two adjacent vacant lots in Maquoketa, Iowa. (Exhibit "A" attached to the Administrator's Motion to Set Aside Conveyances filed in June 2016).

The Administrator's Motion alleged that these three lots had been transferred in defraud of creditors to Kindsfather.

The Administrator failed to get admitted any evidence at trial regarding any unsecured income taxes owed by the decedent over and above the secured amount of income taxes stipulated to by the parties in the amount of \$40,278.28. The Administrator further failed to have admitted any evidence regarding potential claims of other creditors of the decedent

including their identities and the nature and amount of their claims and whether the Administrator has admitted or denied any such claims against the estate. The Administrator's Exhibits 1 through 21 were admitted by the trial court before the testimony began. (Day 1, Tr. p. 13). The State of Iowa had no separate exhibits. (Day 1, Tr. p. 18).

After a bench trial, the trial court found that these three lots were fraudulently conveyed by the decedent to Kindsfather. Lot 12 is the personal residence of Kindsfather in which she has reside since 2009. The trial court also found that the decedent's one-half interest in a Jackson County farm had also been fraudulently conveyed.

The Court of Appeals decision reversed the district court ruling setting aside the deed to the farm, leaving title in Kindsfather. This portion of the Iowa Court of Appeals decision favorable to Kindsfather is not the subject of Kindsfather's Application for Further review.

Kindsfather files her Application for Further Review seeking to reverse the ruling of the trial court setting aside the transfer of the house and two adjacent lots and the decision of the Iowa Court of Appeals affirming this district court ruling.

ARGUMENT

I. Whether the Iowa Court of Appeals erred when it failed to find that the Administrator was barred by the Doctrine of Unclean Hands from recovering the value of Kindsfather's real estate over and above the amount of the Iowa Department of Revenue's secured liens recorded prior to the decedent's transfer of the real estate to Kindsfather when there is no evidence of any other creditors of the estate.

Grounds for Further Review:

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Shaw v. Addison*, 239 Iowa 377, 28 N.W.2d 816, 827 (Iowa, 1947).

“The clean hands maxim need not be pleaded; the district court may apply the maxim on its own motion.” *Opperman v. M. & I. DEHY, INC.*, 644 N.W.2d 1, 6 (Iowa, 2002).

Argument:

The Administrator is barred by the Doctrine of Unclean Hands from recovering real estate fraudulently transferred by the decedent to Kindsfather for the benefit of his intestate heirs. *Shaw v. Addison*, 239 Iowa at 398, 28 N.W.2d at 827.

The trial court found that: “the parties agree the total amount of \$40,278.28 represents the principal amount of the lien encumbrances on the

properties which are the subject of the action, with \$16,171.09 of that amount also encumbering the Jackson County farm property. (Decision p. 4, third paragraph from the top) (App. p.54).

The evidence admitted at trial prove that the house conveyed by the decedent to Kindsfather is currently worth \$233,200.00. (App.p. 91).

The Administrator's Exhibit 16 shows the 2016 Jackson County tax assessed value for lot 11 (one lot) to be \$26,100. (App. p. 212). Lot 13 was presumably assessed at a similar amount as Lot 11.

Allowing the Administrator to sell Kindsfather's property with no restrictions on the use of any funds derived from the sale to prevent said funds from going to Kindsfather's heirs would be *in direct conflict* with the ruling in the *Shaw v. Addison*, 239 Iowa 377, 398, 28 N.W.2d 816, 827 (Iowa, 1947).

The Court of Appeals did not rule on the Unclean Hands Doctrine with regard to the transfer of the farm because it decided the issue of the farm transfer based upon the Statute of Limitations. (Decision, p. 10, ftnt. 3).

With regard to the transfer of the house and two lots, the Iowa Court of Appeals ruled that the Unclean Hands Doctrine in *Shaw* has been superseded by Iowa Code section 633.368. (Decision, pp. 10 – 12).

However, there is no conflict between the *Shaw* ruling and section 633.368. Under *Shaw* the heirs *cannot benefit* from the Administrator's recovery of fraudulently conveyed assets. Under section 633.368 only the "creditors" of the decedent *can benefit* from the Administrator's recovery of fraudulently conveyed assets. These results are not mutually exclusive.

The trial court's decision should have been reversed and the Administrator's Motion should have been denied.

II. The Iowa Court of Appeals erred when it failed to reverse the district court order which set aside the transfers from Glaser to Kindsfather because Iowa Code sections 633.368 and 684.7(1) and *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231 (Iowa 1926) allow relief from a fraudulent transfer "only to the extent necessary" to satisfy the DOR's income tax liens against the decedent proven at trial.

A. Grounds for Further Review.

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals the Court of Appeals decision filed July 22, 2020 is in conflict with a previous decisions of the Iowa Court of Appeals and Iowa Code section 633.368 and section 684.7(1) and *Carson v. Rothfolk*, No. 3-504/12-1021 (Iowa App. 8/7/2013)(Iowa App., 2013) p. 6 and *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231 (Iowa 1926).

B. Argument.

1. The value of Kindsfather's equity in the property she received from the decedent exceeded the amount of the Iowa income taxes owed by the decedent proven at trial.

The Iowa Court of Appeals erred when it failed to reverse the district court decision setting aside the decedent's conveyances of the house and two lots to Kindsfather when Kindsfather's equity in said property exceeded the amount of the Iowa income taxes owed by the decedent proven at trial.

Iowa Code section 684.7 and section 633.368 allow relief from a fraudulent transfer "only to the extent necessary" to satisfy the income tax liens against the decedent proven at trial.

The evidence in the trial record proves that in 2019, the house and two lots were worth about \$285,000.00. (App. p. 91).

The parties stipulated that at the time of trial the amount of secured debt owed to the DOR was \$40,278.28. (App.p. 54). Subtracting the secured debt from the value of the house and two lots leaves a balance of about \$245,000.00 of equity which all or part could end up going to the intestate heirs under the trial court order.

The Court of Appeals ruling allows the Administrator to recover property fraudulently conveyed by the decedent under Iowa Code section 684.7 and section 633.368 with no restrictions on who can receive the benefit of the recovery over and above the amount of the DOR's claim, even though the *Shaw* case *specifically prohibits* Glaser's intestate heirs from benefitting from such a recovery.

2. Iowa Code section 633.368.

The DOR requested the Administrator file this action to recover real estate fraudulently conveyed by the decedent. (Decision, p. 2).

The trial court erred when it ruled that Iowa Code section 684.7 does not limit the Administrator's recovery of fraudulently conveyed property. (Decision, p. 13). The trial court ruled that under Iowa Code section 633.368 all of the properties transferred by Glaser were to be sold at Sheriff's sale and the proceeds turned over to the Administrator and that the proceeds of sales were to be delivered to the estate for "proper distribution" to "some or all" of the creditors of the estate, (Decision, p. 20, Section D). (App. p.70).

The Iowa Court of Appeals only reference to other creditors of the estate was the statement: "Various creditors filed claims. One of those creditors was the Iowa Department of Revenue (DOR)." (Decision, p. 2).

The Court of Appeals stated that "Iowa Code section 633.368 ... further provides that 'the right to recover such property, *so far as necessary for the payment of the debts and charges against the estate of the decedent,* shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same.' " The remainder of section 633.368 reads: "*Such property shall constitute general assets for the payment of all creditors.*"

This language in section 633.368 is consistent with the *Shaw* case and limits the amount of the Administrator's recovery of value from the house and two lots to the amount necessary to make the DOR whole in the amount of the unsecured income taxes the Administrator proved at trial were owed by the decedent to the DOR.

The Iowa Court of Appeals erred when it concluded that section 684.7 only governs the remedies available to "a creditor," [but] not the administrator of an estate suing under section 633.368. (Decision, p.13). This logic might be correct if the Administrator had filed an action to recover property solely on behalf of the estate. However, in the *Kindsfather* case, the Administrator was suing as the surrogate of the creditor, the DOR. Consequently, the Administrator's recovery of property on behalf of the DOR is limited by section 684.7 to the DOR's claims proven at trial.

There were no other creditor's claims pled by the Administrator as part of her Motion to Set Aside Conveyances and the Administrator offered no proof at trial of the identity of any such creditors or the amounts of their purported claims against the decedent.

The Court of Appeals has already ruled in this case that *Kindsfather* was entitled to fair notice of the Administrator's claim to recover the farm.

The Supreme Court must now rule that Kindsfather had no notice whatsoever concerning other claims of creditors in the estate and no chance to defend those claims in this action and that the Administrator, under the facts in this trial record, had no right under section 633.368 to recover assets for the DOR in excess of the claims for unsecured income taxes against the decedent that the Administrator proved in court.

The Supreme Court must now rule that there was *no legal basis* for the district court or the Iowa Court of Appeals under 633.368 to set aside and void the three Quitclaim Deeds for the house and two lots based solely upon the two income tax liens that had attached to Kindsfather's properties prior to their conveyance totaling \$40,278.28 (App.p. 54) and with no evidence of any unsecured income tax liens recorded after the conveyance of these three lots to Kindsfather.

3. Iowa Code sections 684.4 and 684.7(1)(a).

The Iowa Court of Appeals erred when it stated "So section 684.7 does not limit the Administrator's recovery" under section 633.368. (Decision, p. 13).

The Iowa Court of Appeals has recently held that "Chapter 684 of the Code of Iowa, the Uniform Fraudulent Transfers Act, applies to *all claims*

based upon alleged fraudulent transfers arising after January 1, 1995.”

Carson v. Rothfolk, No. 3-504/12-1021 (Iowa App. 8/7/2013)(Iowa App., 2013) p. 6.

Iowa Code chapter 684 applies to this action pursued by the Attorney General under the DOR’s authority under Iowa Code section 421.26 even in these probate proceedings brought by the Administrator under Iowa Code section 633.368.

Iowa Court of Appeals erred when it failed to limit the relief granted by the trial court to the relief allowed under section 684.4 and section 684.7(1)(a).¹

Under section 684.7, a fraudulent conveyance in and of itself does not render the conveyance void. See, *Schaefer v. Schaefer*, 795 N.W. 2d 494,

¹ The remedies contained in Iowa Code section 684.7(1)(a) (a special statute) prevail over those contained in Iowa Code section 633.368 (a general statute). Iowa Code section 4.7. In *State v. Perry*, 440 N.W.2d 389, 390 (Iowa 1989), the Iowa Supreme Court held that:

It is a fundamental rule of statutory construction that where a general statute, if standing alone, would include the same matter as a special statute and thus conflict with it, the special statute will be considered an exception to or a qualification of the general statute and will prevail over it, whether it was passed before or after such general enactment. *State v. Halverson*, 261 Iowa 530, 537-38, 155 N.W.2d 177, 181 (1967).

In 1971, this rule was codified at Iowa Code section 4.7, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

498 (Iowa 2009), and *Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 884 (Iowa 1996).

The trial court's statutory authority to grant relief has been limited by Iowa Code section 684.7(1)(a) to fashion relief for the "avoidance of the transfer ...to the extent necessary to make the DOR whole.

Iowa Code section 684.7(1)(a) provides relief to the DOR only to the extent necessary to satisfy the DOR's unsecured claims. See, Iowa Code section 684.8(2).

Under section 684.7(1)(a), once the DOR is made whole from the injuries suffered by the fraudulent transfer by Glaser, the title to the properties should remain in Kindsfather. See, *Schaefer v. Schaefer*, 795 N.W. 2d 494, 498 (Iowa 2011).

Without evidence in the trial record of the amount of any unsecured tax obligations owed by the decedent to the DOR, the Court of Appeals decision violates *Schaefer v. Schaefer* and Iowa Code section 684.7(1)(a) when it failed to reverse the district court's order to sell the house and the two vacant lots to satisfy claims against the decedent.

Under the evidence admitted at trial, setting aside of these transfers will generate funds for the estate far excess of the amount necessary to make

the DOR whole. This decision violates section 684.7(1) which limits court ordered relief to the amount necessary to make the injured creditor whole.

4. *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

The district court only had the *power to avoid* a portion of the transfer sufficient to make the DOR whole. See, *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230, 231-234 (Iowa 1926).

If the heirs are barred from benefitting from such a recovery under the *Shaw* rule and only the DOR has brought an action to recover property through the Administrator under section 633.368 and the DOR has been made whole, what happens under the Iowa Court of Appeals decision to the value of house and two lots over and above the amount of income taxes proven to be owed to the DOR?

In *Crowley v. Brower*, 201 Iowa 257, 207 N.W. 230 (Iowa 1926), the Iowa Supreme Court reviewed an action to set aside a conveyance of certain real property upon the ground that such conveyance was in fraud of creditors, and was subject to the payment of the creditors' debts. *Id.*, p, 231.

The Iowa Supreme Court stated:

We cannot find from the evidence that it was the intention of the parties to cover up the property for the purpose of hindering, delaying, or defrauding creditors. Nothing in the nature of a secret trust is proven. The transfer was not merely colorable but for the purpose of

vesting title in the grantee. This being true, the conveyance cannot be set aside at the instance of a subsequent creditor, unless he was deceived or misled to his damage by the failure of the grantee to place the deed of record or the conveyance was for the express purpose of defrauding subsequent creditors.

Crowley v. Brower, 201 Iowa at 261, 207 N.W. at p. 232.

The *Crowley* court further stated:

The transfer was void only to the extent found by the court in favor of the [bankruptcy] trustee, and it was the duty of the court to establish the same as a lien against the property, and not to set aside the conveyance absolutely so as to vest title in the trustee.

Crowley v. Brower, 201 Iowa at 262, 207 N.W. at p. 233.

The three Quitclaim Deeds from the decedent to Kindsfather for lots 11, 12 and 13 were all dated November 19, 2012 and were recorded in the Jackson County Recorder's Office as Doc. No. 12-5543, Doc. No. 5544, and Doc. No. 5545. There is no evidence in the trial record of any attempt by the decedent or Kindsfather to conceal these transfers from the public or from the DOR. There is no evidence that the DOR was deceived or misled.

Because the value of the house and two lots transferred by the decedent to Kindsfather greatly exceeds the amount of the DOR's claims proven at trial, title to the real estate should have remained in Kindsfather, subject to the income tax liens recorded prior to the transfers to Kindsfather and also subject to a new judgment in rem for the amount of the DOR's

proven claim for unsecured income taxes. See, *Crowley v. Brower*, 201 Iowa at 262, 207 N.W. at p. 233.

The trial court's decision should have been reversed by the Iowa Court of Appeals and the Administrator's Motion should have been denied by the Iowa Court of Appeals.

III. The Iowa Court of Appeals erred when it failed to reverse the trial court's order setting aside the transfers of the house and two lots to Kindsfather when there was no evidence in the trial record proving the DOR's claims regarding income taxes which *had not been recorded as liens prior to the decedent's transfer of real estate to Shreve and Kindsfather.*

Grounds for Further Review.

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(1), the Court of Appeals entered a decision which is in conflict with the Iowa Supreme Court decision in *Crowley v. Brower*, 201 Iowa 257, 261-262, 207 N.W. 230, 232-233 (Iowa 1926) and Iowa Code section 684.7 and section 633.368 because the order setting aside the transfer of the house and two lots was far in excess of the relief necessary to make the DOR whole.

Argument.

The trial judge stated on the record prior to the trial that *the issue for the trial was whether the DOR could obtain relief for the portion of its claim relating to income tax liens that had not been recorded prior to the*

decedent's transfer of real estate to Shreve and Kindsfather. (Transcript, Vol. I, p.19).

However, there was no evidence admitted during the trial regarding any income taxes owed by the decedent over and above the secured liens in favor of the DOR in the stipulated amount of \$40,278.28.

The Administrator failed to offer any witness' testimony regarding the decedent's account balance at the DOR or copies of recorded income tax liens in support of a claim for any income taxes owed by the decedent over and above the amount of the secured liens.

Without evidence in the trial record, the Court of Appeals could not consider any income taxes the decedent may have owed the DOR over and above the secured liens in the amount of \$40,278.28 and the Iowa Court of Appeals had no authority to set aside the transfers of the house and two lots based solely on conjure and speculation.

The only evidence of Glaser's indebtedness to the DOR at the time he transferred the house and two lots to Kindsfather were two income tax liens recorded before the transfers in the Jackson County Recorder's Office as Documents 08-75 and 12-520. (App.p. 93 and p. 93). The parties stipulated at trial that these two liens amounted to \$40,278.28. (App.p. 54). There is *no*

evidence in the trial transcript or trial exhibits of any other state income taxes the decedent owed over and above this amount.

The transfer of the house and two lots to the extent of \$40,278.28 is not a fraudulent transfer when this amount was secured by two liens upon the house and two lots.

Iowa Code section 684.1(2)(a) states that by definition, the term “asset” under the Uniform Fraudulent Transfer Act “does not include property to the extent it is encumbered by a valid lien”. Section 684.1(2)(a).

² Therefore, under Section 684.1(2)(a), the *transfer of property subject to a valid recorded tax lien is not, by definition, a fraudulent transfer.*

The transcript shows that the trial court did not make any finding of fact as to the amount of any unsecured income taxes owed by the decedent to the DOR over and above the stipulated secured amount of \$40,278.28.

The Administrator did not file a Rule 1.904(2) Motion requesting the district court to correct the record and add a finding as to the balance of any unsecured income tax liens over and above the secured income tax liens.

² Under the definition of a “statutory lien” contained in Iowa Code section 684.1(8), the Iowa Department of Revenue had a “statutory lien” against the house and two lots under 422.26 which was a “valid lien” under section 684.1(12). Pursuant to section 422.26(3), the Iowa Department of Revenue liens were valid as to third parties under section 684.1(12) because they had been recorded.

Consequently, the Iowa Supreme Court must conclude that the trial court found against the DOR on this issue and determined that there was no evidence in the trial record to support a factual finding regarding any DOR claims for any unsecured income taxes owed by the decedent over and above \$40,278.28.³

A judgment in rem would have been sufficient relief under the “relief only to the extent necessary” standard to satisfy the unsecured income tax obligations of the decedent proven at trial.

The house and two lots are worth more than the total income taxes owed to the DOR as stipulated at trial and under the *Shaw* ruling and section 633.368, the titles to these properties should have remained with Kindsfather.

The trial court order setting aside the transfer of the house and two lots should have been reversed by the Iowa Court of Appeals and the Administrator’s Motion should have been denied.

The Supreme Court must conclude that because the two secured income tax liens in the amount of \$40,278.28 were not a valid basis for

³ The DOR should have independently pursued its administrative collection proceedings authorized under Iowa Code section 422.26(7)(b) to collect on its income tax liens recorded prior to the decedent’s transfer of the real estate to Kindsfather.

setting aside the three Quitclaim Deeds to Kindsfather and because the Administrator's Motion to Set Aside the three Quitclaim Deeds should have been denied by the district court for failure of proof, the Iowa Court of Appeals failure to reverse the decision of the trial court must now be reversed by the Iowa Supreme Court.

IV. The Iowa Court of Appeals erred when it did not reverse the trial court's failure to grant Kindsfather the right to redeem the properties from a judgment "in rem" in favor of the Estate.

A. Grounds for Further review.

Under Iowa Rules of Appellate Procedure, Rule 6.1103(1)(b)(2), the Court of Appeals has decided an important question of law that has not been, but should be settled, by the Iowa Supreme Court regarding whether Iowa Code section 684.7(2) gives the trial court authority to allow Kindsfather the right to redeem from an execution sale.

Kindsfather preserved the issue that the trial court erred when it did not establish Kindsfather's right to *redeem* from the judgment in rem against the properties in the amount of income tax obligations proven by the Administrator in the court. (I.R.Civ. Rule 1.904(2) Motion, p. 2) (App.p.75).

B. Argument.

The trial court ordered that: “Such properties described in Attachment/Appendix A to the Administrator’s post-trial brief shall be sold on execution to satisfy all accepted claims against the Estate and, *if not redeemed*, shall be conveyed to the purchaser by the sheriff free of the claims of all claimants.” (Ruling p. 21. Par 3). [*italics added*].(App.p. 71).

The Administrator presented no evidence of any “accepted claims against the Estate”. The Administrator did not present evidence regarding any other claims against the Estate, the amount of such claims, or that any claims against the Estate had been accepted by the Administrator. Without evidence in the trial record regarding any other “accepted claims against the Estate”, such hypothetical accepted claims cannot be considered in determining the outcome in this case.

Section 684.7(2) gives the trial court authority to allow Kindsfather the right to redeem from execution sale. The Iowa Court of Appeals erred when it did not reverse the district court and specifically grant Kindsfather the right to redeem from any judgment *in rem* based upon the evidence admitted at trial. The Iowa Court of Appeals decision must be corrected and modified to allow Kindsfather to redeem her property received from the decedent from any judgment *in rem* the court imposes upon this property to satisfy any unsecured claims of the DOR proven in trial.

REQUESTED RELIEF

Kindsfather requests that the Supreme Court to accept her Application for Further Review of the adverse rulings contained in the Decision of the Iowa Court of Appeals filed July 22, 2020 and to reverse the adverse rulings of the trial court and the adverse rulings in the decision of the Iowa Court of Appeals regarding the setting aside the decedent's transfer of the house and two lots to Kindsfather and denying the Administrator's Application to Set Aside these transfers.

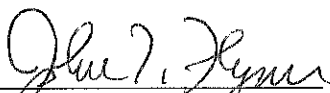
REQUEST FOR ORAL ARGUMENT

Kindsfather respectfully requests that she be heard in oral argument on this Application for Further Review and Brief, if allowed by the I.R. App. P. 6.1103.

Dated: August 11, 2020.

Respectfully submitted:

Sherri M. Kindsfather

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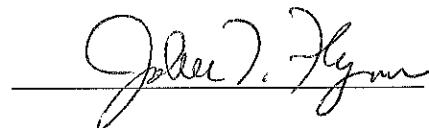
ATTORNEY FOR THE CLAIMANT-
APPELLANT

**Certificate of Compliance with Type-Volume Limitation, Typeface
Requirements, and Type-Style Requirements**

I hereby certify that this Application for Further Review complies with the type-Volume limitation of I.R. App. P. 6.903(1)(g)(2) or (3) because this Brief contains 4,466 words, excluding the part of the Application for Further Review exempted by I.R. App. P. 6.903(1)(g)(1).

I further certify that this Application for Further Review complies with the typeface requirements of I.R. App. P. 6.903(1)(e) and the type-style requirements of I.R. App. P. 6.903(1)(f) because this Application for Further Review has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

Date: August 11, 2020

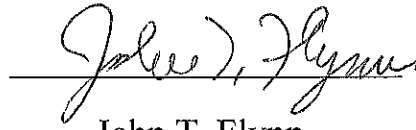
A handwritten signature in cursive script, reading "John T. Flynn", is written over a horizontal line.

John T. Flynn

Attorney's Cost Certificate

I, John T. Flynn, hereby certify that the true and actual amount paid for the printing of the forgoing Claimant- Appellants' Application for Further Review consisting of 35 pages was the sum of \$0.00, exclusive of service, tax, postage and delivery charge.

Date: August 11, 2020


John T. Flynn

Certificate of Filing and Service

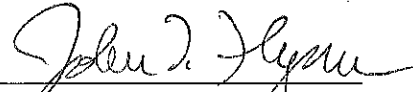
I certify that on the 11 day of August, 2020, the foregoing document was electronically filed with the Iowa Supreme Court Clerk of Court through the Iowa Judicial Branch Appellate Courts Electronic Filing System Notification and access to such filing shall be provided by the Electronic Filing System to all counsel of record who are members of the ECF system.

Proof of Service

I further certify that on the 11th day of August, 2020, I served one (1) copy of the foregoing Claimant-Appellants' Application for Further Review by depositing one copy in the U.S. Mail, with postage prepaid, addressed to:

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