IN THE SUPREME COURT OF IOWA
Supreme Court No. 19–0008
Jackson County No. ESPR020230

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

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

STATE OF IOWA ex rel. DEPARTMENT OF REVENUE
Appellees,

vs.

SHERRY M. KINDSFATHER,
Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JACKSON COUNTY
THE HONORABLE SEAN MCPARTLAND, JUDGE

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: July 22, 2020)

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QUESTIONS PRESENTED FOR FURTHER REVIEW

The Iowa Court of Appeals affirmed most of the district court's determinations, but reversed on two issues.

First, the Court of Appeals ruled that the statute of limitations issues precluded a determination of the issues based on merit, despite no allegations that the "staleness" of the claim prevented Kindsfather from presenting a full and fair defense. Kindsfather did not argue, and the Court of Appeals made no findings of fact, that she suffered any prejudice as a result of the district court applying the relation back doctrine to the farm.

1. **If a petition is amended at the close of evidence, is the court required to balance statute of limitation issues with deciding a case based on the merits, consistent with this Court's prior guidance?**

Second, the Court of Appeals reversed the findings of the district court that the pleadings provided Kindsfather with sufficient notice to defend against the Administrator's assertion that the transfers related to the farm were part of Glaser's series of fraudulent transactions designed to defraud his innocent creditors. The Court reversed based on a hypertechnical reading of the pleading, despite Kindsfather having substantial documented notice that the farm transfers were going to be part of the Administrator's evidence, including lengthy deposition questioning more than a year prior to trial on the merits.

2. **If Kindsfather had ample notice that the Administrator intended to prove up its claim that the farm properties were transferred to defraud creditors (both because Kindsfather was involved in the extensive series of fraudulent transfers and because the farm transfers were the subject of deposition questioning and pre-trial motion practice), does this notice satisfy pleading requirements to ensure that Kindsfather had opportunity to defend the claims so that the question could be decided on its merits?**

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STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals reversed aspects of the district court decision on procedural grounds inconsistent with this Court's guidance, as demonstrated in *Estate of Kuhns v. Marco*, 620 N.W.2d 488 (Iowa 2000) and other cases. The Administrator was able to prove, with substantial competent evidence, that Glaser and Kindsfather engaged in a series of fraudulent transactions designed to defraud their innocent creditors. The Court of Appeals agreed with the district court's conclusion that the transfers related to the farm were "part of a broader effort to defraud creditors," yet reversed the decision of the district court to void the transactions related to the farm. It did so without any findings that Kindsfather was limited in any way in her ability to put on a defense due to issues involved with statute of limitations; without finding that Kindsfather was unable to marshal all available evidence in her defense; and without finding that Kindsfather's interests were prejudiced in any way by what the Court of Appeals determined was inartful pleading.

The Court of Appeals made this determination despite its affirming the district court's underlying conclusions as to the merits. "As to the merits, the district court found clear and convincing evidence that Glaser's conveyances of Lots 11, 12, and 13 as well as the farm were made to defraud creditors." *See* SlipOp at *3. The Court of Appeals later concluded that, "We

agree with the administrator that, in hindsight, both the farm transfers and the transfers of Lots 11, 12, and 13 seem to have been part of a broader effort to defraud creditors." *See* SlipOp at *6. The Court of Appeals also noted that, "And following our de novo review of the ample evidentiary record, we adopt the district court's conclusion that Kindsfather was complicit in Glaser's effort to defraud creditors through the transfer of Lots 11, 12, and 13." *See* SlipOp at *13.

Applying hypertechnical readings of pleadings to avoid doing equity for the parties is contrary to the purpose of notice pleading and contrary to this Court's guidance in applying the relation-back doctrine.

STATEMENT OF THE CASE

Nature of the Case

The district court found that Kindsfather conspired with decedent Glaser to transfer four properties out of his name (referred to as Lots 11, 12, 13, and the farm) to avoid the reach of his innocent creditors. The Court of Appeals affirmed the district court's findings of fact with relation to all four properties, affirming that Kindsfather was complicit in these efforts to defraud creditors. The Court of Appeals further affirmed the district court's conclusions of law, agreeing that voiding these transfers and allowing the Administrator to recapture these assets for proper distribution to creditors was the appropriate remedy for this lengthy series of fraudulent transactions.

The Court of Appeals, however, reversed the district court on two issues related to the farm. First, the district court allowed the pleading to be amended to explicitly include the farm and concluded that the amendment related back to the filing of the initial pleading, thereby determining that the pleading was filed within the appropriate statute of limitations. Secondly, the district court found that the Administrator's pleading encompassed the farm. Based on a hyper-technical reading of the pleading, the Court of Appeals reversed this conclusion of law. Without following this Court's requirement for analyzing the competing interests of determining controversies on their

merits versus the dangers of trying stale claims; and without determining that Kindsfather would be prejudiced by allowing the amendment to relate back; the Court of Appeals reversed this conclusion of law from the district court as well.

The Administrator requests further review and requests this Court to correct these errors and affirm the district court's accurate conclusions of law.

Statement of Facts

The facts are accurately summarized in both the district court opinion and, much more concisely, in the Court of Appeals opinion.

ARGUMENT

The Court of Appeals affirmed the trial court's well-supported findings of fact, agreeing that Appellant Sherry Kindsfather aided decedent Francis (Gus) Glaser in fraudulently transferring properties to evade Glaser's creditors. Further, the Court of Appeals affirmed the trial court's legal conclusion that Iowa Code 633.368 "specifically authorizes an administrator to recover property that was fraudulently conveyed, and 'such property shall constitute general assets for the payment of all creditors.' " *See* SlipOp at *13.

Specifically, the trial court made substantial findings of fact, which the Court of Appeals summarized succinctly, "Francis Glaser wanted to avoid paying his creditors. Toward that end, Glaser conveyed some property to a friend, Sherry Kindsfather." *See* SlipOp at *2. The Court of Appeals also noted that, "As to the merits, the district court found clear and convincing evidence that Glaser's conveyances of Lots 11, 12, and 13 as well as the farm were made to defraud creditors." *See* SlipOp at *3. The Court of Appeals later concluded that, "We agree with the administrator that, in hindsight, both the farm transfers and the transfers of Lots 11, 12, and 13 seem to have been part of a broader effort to defraud creditors." *See* SlipOp at *6. The Court of Appeals also noted that, "And following our de novo

review of the ample evidentiary record, we adopt the district court's conclusion that Kindsfather was complicit in Glaser's effort to defraud creditors through the transfer of Lots 11, 12, and 13." *See* SlipOp at *13.

The district court made its extensive findings of fact based on a substantial record that included the "stipulations of the parties, the documentary evidence at the time of trial, the testimony and credibility of the witnesses (referred to earlier as "extensive testimony"), [and] the exhibits received." Dist Ct. Order at 1 (App. at 51. Though the standard of review in equity cases is "de novo," and the Court of Appeals thus had the opportunity to review the district court's findings of fact, it affirmed the district court's findings of fact that all four properties at issue were "part of a broader effort to defraud creditors." SlipOp at *6.

The Administrator seeks further review to request reversal on the Court of Appeals' erroneous application of the law, specifically in relation to court rules. As the Court of Appeals noted, to "the extent this case turns on issues involving interpretation of statutes or court rules," the appellate court review is for "errors at law." *See* SlipOp at *4.

I. The Court of Appeals erred in reversing the trial court's application of the relation back doctrine.

As noted by the Court of Appeals, application of the relation back doctrine on an issue that would otherwise be time-barred requires balancing

the interests of protecting a party from stale claims and achieving justice between the parties. The Court of Appeals cites at length from *Estate of Kuhns v. Marco* when discussing this position. 620 N.W.2d 488 (Iowa 2000). However, *Estate of Kuhns* goes on to add, "[T]he chief purpose of the notice requirement of the relation back rule is to ensure that any amendment to a pleading made after the statute of limitations has expired does not cause the type of prejudice to the defendant sought to be avoided by the statute of limitations." *Id* at 494. The Iowa Supreme Court then emphasized, "[I]t is important to remember that the relation back rule must not be applied to permit a statute of limitations defense to be based on 'inconsequential pleading errors.'" *Id*.

This reading is consistent with application of the comparable federal rule. "The chief consideration in determining the applicability of the equitable doctrine of 'relation back' is prejudice to the opposing party. Thus, where the proper defendant is put on notice of the plaintiff's claim and the opposing party is not prejudiced by the addition of parties or claims, the amendment will relate back to the commencement of the suit." *Mingolla v. Minnesota Min. & Mfg. Co*, 893 F. Supp. 499, 504 (DVI 1995). In fact, the 1991 amendments to the rule emphasize the need to construe the rule liberally to allow for justice. "The rule has been revised to prevent parties

against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense." *Id.* (citing the Notes of Advisory Committee on Rules 1991 Amendment).

The other case cited by the Court of Appeals in support of its decision also requires an analysis of whether the non-amending party would be prejudiced by application of the relation back doctrine. *See Willson v. City of Des Moines*, 386 N.W.2d 76, 83-84 ("An amendment should not be allowed if it would substantially change the issues in the case.) Like *Estate of Kuhns*, *Willson* also specifies that the court must consider factors beyond a technical reading of the pleadings, "such as whether the non-amending party would be prejudiced." *Id*. The facts of *Willson* are distinguishable. *Id*.

The Court of Appeals, in its parenthetical citation, suggests that the two cases are similar because, in *Willson*, the "plaintiff's amended petition significantly expanded the scope of the litiation because its new claim arose from a separate incident that occurred after the events alleged in the original pleading. *See* SlipOp at *10. The Court then suggests that the conduct described in the motion "occurred after—and was not the same as—Glaser's transfer of the farm to Shreve in September 2011 and Shreve's transfer of the farm to Kindsfather in September 2012. *See* SlipOp at *9-10

The Court of Appeals misstates the facts as outlined in detail in the district court's order, however. The district court provided a detailed record of the transactions that contradicts the Court of Appeals' simplified description. The transfer of Lot 12 occurred originally on January 7, 2008. Dist Ct. Order at 4 (App. at 54). Additional transfers of Lots 11, 12, and 13 occurred, which conferred the properties back and forth between Glaser and Kindsfather, based on which one of the two needed to shield property from creditors at specific times. Rather than occurring "after," as characterized by the Court of Appeals, the transfers of the farm property overlapped the multiple transfers of the other properties and were all motivated with the intent to defraud creditors. Dist Ct. Order at 4-8 (App. at 54-58).

As detailed by the district court and affirmed by the Court of Appeals, the transfers involving the farm "seem to have been part of a broader effort to defraud creditors." *See* SlipOp at *6.

A. The objective of achieving justice between the parties weighs heavily in favor of the injured creditors.

The question of what would be the fair and just decision on the merits of this case is not in dispute. The district court detailed extensive fact findings based on a well-developed record, and the Court of Appeals affirmed these findings.

The district court found that there was "overwhelming" direct and indirect proof of Glaser's fraud. Dist. Ct. Order at 21 (App. at 71). As the district court noted, "[A]lthough fraud typically is not committed openly and usually is an offense of secrecy, Glaser in this matter was explicit and clear in his intent to defraud creditors and in his directions to Kindsfather seeking her assistance in his endeavor." *Id*. at 18 (App. at 68). The Court further found that, "Kindsfather's complicity or cooperation with Glaser is clear from her actions, inactions and demeanor at trial." *Id*. at 20 (App. at 70), and that "Kindsfather was aware of Glaser's activities and intent or acted in willful disregard of such activities and intent." *Id*. at 21 (App. at 71). The district court further found there was proof of prejudice to Glaser's creditors, specifying that, "Most of the Estate's creditors . . . will not be paid if the property that was fraudulently conveyed is not returned to the Estate for proper distribution. If the fraudulent transfers are nullified and the recaptured assets are returned to the Estate for proper distribution, some or all of these creditors will have their claims partially or fully satisfied." *Id*. at 20 (App. at 70).

B. Kindsfather was not prejudiced by issues related to the statute of limitations.

Beyond broadly noting the potential problems that could arise from an otherwise time-barred claim (including diminished memories of witnesses,

disappearance of witnesses, and lost evidence), the Court of Appeals made no findings to suggest that Kindsfather was prevented from presenting evidence due to the passage of time. In fact, the oldest evidence, related to all four of the properties at issue, including the farm, proved up Glaser's insolvency.

Perhaps the most surprising aspect of this series of fraudulent transactions was the blatancy in which they were carried out. As the district court noted in quoting the Iowa Supreme Court, "Fraud is not committed openly. It is an offense of secrecy. Direct evidence is rarely obtainable." Dist Ct. Order at 17 (App. at 67) (quoting *Rose v Rouse*, 174 N.W. 2d 660, 667 (Iowa 1970). As the district court noted, however, "there is abundant clear and convincing direct evidence proving Glaser's fraud in transferring the assets at issue in order to evade creditors." Dist Ct. Order at 19 (App. at 69).

This evidence of direct fraud was documentary evidence – much of it public record of the kind courts routinely rely on for decades, if not centuries. Certainly, this evidence was not subject to diminished memories of witnesses, disappearance of witnesses, or lost evidence. Specifically, this evidence included publicly-recorded liens, publicly-recorded property transfers, and publicly-recorded mortgages. Further, in the 130 pages of briefing she submitted to the Court of Appeals and the countless oral and

written pleadings in district court, Kindsfather never alleges that she was subject to any of the challenges the Court of Appeals noted sometimes arise in cases barred by the statute of limitations. Rather, as noted by the district court, this evidence of direct fraud included Glaser's own writings, confirmed to be his by Kindsfather, mortgage documents, property transfers, and liens. Dist Ct. Order at 17-19 (App. at 67-69). The Court of Appeals provides no analysis of how Kindsfather's ability to dispute the Administrator's claims was impacted by the passage of time, and in fact, concludes that "both the farm transfers and the transfers of Lots 11, 12, and 13 seem to have been part of a broader effort to defraud creditors." *See* SlipOp at *6.

Perhaps most important to recognize is that Kindsfather never alleged prejudice in any of her extensive briefing before the Court of Appeals, and the Court of Appeals made no findings of prejudice to Kindsfather in its decision.

C. The amendment should relate back because it was part of the same conduct, transaction, or occurrence as outlined in the original motion.

Rule 1.402 does not provide a definition of conduct, but consistent application of the term in both state and federal courts applying it demonstrate that it was never intended to refer to a single discrete act. *Rieff,*

for example, refers to "conduct" as more than a single discrete act. *Rieff*, 630 N.W. 2d at 289 ("Clearly, the class claims arise out of the same conduct and transactions enunciated in the derivative claims.") Similarly, *Black's Law Dictionary* defines "conduct" as "collectively, a person's deeds." Black's Law Dictionary (11th ed. 2019).

In analyzing the comparative federal Rule, the Fifth Circuit reiterated what the Iowa Supreme Court has consistently said—that an amendment should not relate back "if the alteration of a statement of a claim contained in an amended complaint is 'so substantial that it cannot be said that the defendant was given adequate notice of the conduct, transaction or occurrence that forms the basis of the claim or defense." *F.D.I.C. v. Conner*, 20 F.3d 1376, 1386 (5th Cir. 1994). As previously noted, Kindsfather had documented notice of the Administrator's contention that the Jackson County Farm was fraudulently conveyed over a year prior to trial, and the evidence to prove up the fraudulent conveyances on the other properties was substantially identical as the evidence to prove up the fraudulent conveyance of the Farm. The Fifth Circuit in *FDIC* went on to explain that "the best touchstone for determining when an amended pleading relates back to the original pleading is the language of [the Rule]: whether the claim asserted in the amended pleading arises 'out of the conduct, transaction, or occurrence

set forth or attempted to be set forth in the original pleading." *Id.* In *F.D.I.C.*, the Fifth Circuit allowed the F.D.I.C. to amend its complaint to include additional instances of loans that were similar to the loans included in their original complaint. *Id.* "The conduct identified in the original complaint that allegedly caused the defendants to approve the loans listed in that pleading also allegedly caused the defendants to approve the loans that the FDIC seeks to include in this case through the amended complaint." *Id.* 51.

Other courts who have considered similar issues related to the definition of "conduct" have agreed with the substance of this analysis. The Southern District of Ohio considered an amendment that would have added a claim of "padded charges" to a claim of other wrongful attorney's fees. *Scott v. Fairbanks Capital Corp,* 284 F. Supp. 2d 880, 886 (S.D. Ohio 2003). The Southern District concluded that these "padded charges. . . . arose out of the same mortgage loans, foreclosure proceedings, forebearance agreements, and payoff statements as the attorney's fees. Thus, . . . it is clear that Plaintiffs' proposed claims are based upon the same general conduct that formed the bases for their attorney's fees claims."). Similarly, the Sixth Circuit allowed an amendment that contained "new operative facts," finding that despite these newly-alleged facts, they arose out of the same "conduct,

transaction, or occurrence as the original complaint." *Miller v. Am. Heavy Lift Shipping*, 231 F.3d 242, 249 (6th Cir. 2000).

As the U.S. Supreme Court noted, "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end." *Maty v. Grasselli Chem. Co.*, 303 U.S. 197, 201 (1938). "Amendments in causes where the statute of limitations has run will not as a rule be held to state a new cause of action if the facts alleged show substantially the same wrong with respect to the same transaction . . . or if the gist of the action or the subject of the controversy remains the same; and this is true although the alleged incidents of the transactions may be different." *Id.*

The district court granted the Adminstrator's motion to amend, and this decision was affirmed by the Court of Appeals. The district court also determined that the amendment should relate back to the motion for purposes of calculating when the statute of limitations runs. Despite determining that "both the farm transfers and the transfers of Lots 11, 12, and 13 seem to have been part of a broader effort to defraud creditors," *See* SlipOp at *6, and despite the absence of a finding of any prejudice to

Kindsfather by the amendment relating back, the Court of Appeals reversed the district court. The district court should be affirmed.

II. The farm was included in the original pleading, as it put Kindsfather on notice that the Administrator was requesting the Court void the property transfers related to her fraudulent scheme with Glaser .

Both Iowa and federal rules of procedure are designed to facilitate justice. "The primary purpose of the rules of pleading is to provide notice and to facilitate a fair and just decision on the merits of the case." *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 490-91 (Iowa 2000). Well-established case law emphasizes that "pleading rules do not exist to allow a mistake in a pleading to determine the outcome of a case." *Id.*, (citing *Foman v. Davis*, 371 U.S. 178, 181-82 for the proposition that "it is contrary to the spirit of the rules for a decision on the merits to be avoided on the basis of technicalities.")

In fact, the entire system of notice pleading was "adopted to focus litigation on the merits of a claim." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513-14 (2002). Both Iowa and the federal rules of procedure exist to provide the parties with opportunity to have their positions heard based on merit rather than hypertechnical readings that would deny justice between the parties. *Id*. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the

outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Id*. (citing *Conley v. Gibson*, 534 U.S. 506 (2002).

The Court of Appeals minutely deconstructed the words of the pleading and concluded that the words themselves did not put Kindsfather on notice that all of the fraudulent transactions she engaged in with Glaser were subject to the Administrator's motion. *See* SlipOp at *6-8. However, as the district court noted, Kindsfather herself knew she had engaged in a series of fraudulent transactions related to the farm at the time the Administrator's motion was filed. Dist Ct. Order at 13 (App. at 63) ("Although the original request to set aside did not specifically mention conveyances of the Jackson County farm, Kindsfather was well aware at the time of Glaser's death that Glaser's interest in the farm had been conveyed to her mother and to her prior to his death.") As the perpetrator of the fraud, Kindsfather was privy to more information regarding the extent of her fraudulent behavior than the Administrator, who was charged by statute with protecting the interests of Glaser's innocent creditors.

For example, one of the Court of Appeals' issues with regard to the wording of the motion to set aside conveyances was that the motion did not contemplate that Glaser and Kindsfather had involved Kindsfather's mother

as a party to the conspiracy, as Kindsfather had need to defraud her own creditors. Victims of fraud have less information regarding the full extent of the fraud as the perpetrators of the fraud, which makes fact pleading in advance of discovery the enemy of equity. Victims often need to progress through discovery to realize the full extent of the fraud. This is part of the reason for shifting from fact pleading to notice pleading.

The district court found, and the Court of Appeals affirmed, that Kindsfather had ample *actual notice* that evidence of the fraudulent nature of the farm transfers would be part of the hearing on this matter.

> The Court finds and concludes that Kindsfather was on clear and certain notice, well ahead of the time of trial, of the claims to fraudulent conveyances related to the Jackson County farm. The Administrator's initial pleading . . . provided substantial detail of the basis for the Administrator's claims to fraudulent conveyances. Although the original request to set aside did not specifically mention conveyances of the Jackson County farm, Kindsfather was well aware at the time of Glaser's death that Glaser's interest in the farm had been conveyed to her mother and to her prior to his death. As noted in the findings above, the conveyance of his interest in the farm by Glaser was consistent in manner and timing with his conveyances of Lots 11, 12, and 13. Moreover, Kindsfather was questioned in detail about the conveyances of the farm in her deposition given March 30, 2017, over one year prior to trial. Although all questing and references to the Jackson County farm in the deposition are not presented and discussed in detail here, the Court finds and concludes that, based upon the detailed questioning of Kindsfather from page 78-95 in her deposition, Kindsfather was on notice of issues related to the farm conveyance.

Dist Ct. Order at 13 (App. at 63).

The Court of Appeals thoroughly analyzed the question of whether the wording of the motion would provide fair notice of the Administrator's claims regarding the farm to a party who wasn't aware of the full nature of the scheme in which Kindsfather was "complicit." *See* SlipOp at *5-7 (analyzing the wording of the motion); p 13 (affirming the district court's conclusion that Kindsfather was "complicit" in the scheme). However, the analysis is unnecessary, given that Kindsfather was repeatedly put on actual notice that she would need to dispute the Administrator's evidence that the farm was part of Glaser's scheme to defraud his creditors.

Courts have long held that a court sitting in equity must construe pleadings liberally under Iowa's notice pleading rules, "and will often justify granting relief in addition to that contained in the specific prayer, provided it fairly conforms to the case made by the petition ***and the evidence***." *Lee v. State*, 844 N.W.2d 668, 679 (Iowa 2014)(emphasis added). The unamended petition, when combined with the evidence, justifies granting the relief requested. The district court should be affirmed on this issue.

The district court should be affirmed on each of the issues on which the Court of Appeals reversed. Affirming on either of these issues would result in affirming the district court's order that the transactions regarding

the farm should be voided. This asset should be used to satisfy the claims of innocent creditors rather than serve to enrich Glaser's co-conspirator.

CONCLUSION

The Administrator respectfully requests this Court grant further review, reaffirm that the purpose of the Iowa Rules of Civil Procedure is to facilitate outcomes based on merit, reverse the panel opinion to the extent it reversed the district court's conclusions, and affirm the district court's opinion on all issues.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This application complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(4) because:

1. This application has been prepared in a proportionally spaced typeface using Times New Roman in size 14, and contains **4,927** words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(*a*).

Dated: August 11, 2020

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