

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-1214
MUSCATINE COUNTY NO.
ESPR011653

IN RE: THE MATTER OF THE ESTATE OF VERA E. CAWIEZELL,
DECEASED

Appeal from the Iowa District Court for Muscatine County
The Honorable Thomas Reidel and
The Honorable Patrick McElyea, Judges

APPELLANTS' FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT

Gregg Geerdes
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax
geerdeslaw@peoplepc.com

ATTORNEY FOR APPELLANTS/CO-EXECUTORS
TERRY BROOKS, JILL BROOKS AND PHYLLIS KNOCHE

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 5th day of March, 2020 I electronically filed this document with the Clerk of Court for the Supreme Court of Iowa. I certify that all participants in the case are registered electronic filing users and that service will be accomplished by this electronic filing.

/S/ GREGG GEERDES
GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax
geerdeslaw@peoplepc.com
ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

	<u>PAGE</u>
PROOF OF SERVICE AND CERTIFICATE OF FILING	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES.....	5
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	6
STATEMENT OF THE CASE	9
ARGUMENT	
I. The Trial Court Erred in its Construction and Application of the Lease and Option Provisions Contained in Vera’s Will	
A. Standard of Review	13
B. Error Preservation	13
C. Argument.....	13
II. The Trial Court Erred in its Construction and Invalidation of the Restriction on Transfer Provision Contained in Vera’s Will	
A. Standard of Review	17
B. Error Preservation	17
C. Argument.....	17

III. The Trial Court Erred in Determining the Legal Description
for Vera’s Residence

A. Standard of Review 25

B. Error Preservation 25

C. Argument..... 25

CONCLUSION AND REQUESTED RELIEF 31

REQUEST FOR ORAL ARGUMENT 32

CERTIFICATE OF COMPLIANCE 32

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<u>Alby v. Banc One Financial</u> , 128 P3d 81 (Wash. 2006).....	18
<u>Dickson v. Hubbel Realty Co.</u> , 567 NW2d 427 (Iowa 1997)	13, 15
<u>Guenther v. Roche</u> , 29 NW2d 222 (Iowa 1947)	19
<u>Guilford v. Gardner</u> , 162 NW261 (Iowa 1917)	17, 18
<u>Helms v. Helten</u> , 290 NW2d 876 (Iowa 1980)	17, 23
<u>In Re: Coe College for Interpretation of Purported Gift Restrictions</u> , __NW2d__ (Iowa 2019)	12, 22
<u>In Re: Estate of Johnson</u> , 387 NW2d 329 (Iowa 1986)	13, 16, 23
<u>In Re: Estate of Ohrt</u> , 550 NW2d 181 (Iowa App. 1996)	15
<u>In Re: Estate of Ohrt</u> , 585 NW2d 259 (Iowa 1998)	15
<u>In Re: Hansen’s Estate</u> , 264 NW2d 746 (Iowa 1978).....	16
<u>Sisters of Mercy of Cedar Rapids v. Lightner</u> , 274 NW86 (Iowa 1937)	19
<u>Talladega College v. Callanan</u> , 197 NW635 (Iowa 1924)	27, 28
<u>Other Authorities:</u>	
CJS 2d, <u>Executors and Administrators</u> , §398.....	28
Iowa <u>Code</u> §614.24, 558.68(i).....	19, 23
Iowa Rule of Appellate Procedure 6.1101(c).....	12
<u>Restatement of Property, Third, Servitudes</u> , §3.4 and §3.5	20, 21
<u>Restatement of Property, Third, Wills and Other Donative Transfers</u>	22

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The Trial Court Erred in its Construction and Application of the Lease and Option Provisions Contained in Vera's Will

Dickson v. Hubbel Realty Co., 567 NW2d 427 (Iowa 1997)

Estate of Ohrt, 550 NW2d 181 (Iowa App. 1996)

Estate of Ohrt, 585 NW2d 259 (Iowa 1998)

In Re: Estate of Johnson, 387 NW2d 329 (Iowa 1986)

In Re: Hansen's Estate, 264 NW2d 746 (Iowa 1978)

II. The Trial Court Erred in its Construction and Invalidation of the Restriction on Transfer Provision Contained in Vera's Will

Alby v. Banc One Financial, 128 P3d 81 (Wash. 2006)

Guenther v. Roche, 29 NW2d 222 (Iowa 1947)

Guilford v. Gardner, 162 NW261 (Iowa 1917)

Helms v. Helten, 290 NW2d 876 (Iowa 1980)

In Re: Coe College for Interpretation of Purported Gift Restrictions, __NW2d__ (Iowa 2019)

In Re: Estate of Johnson, 387 NW2d 329 (Iowa 1986)

Iowa Code §614.24

Iowa Code §558.68(i)

Restatement of Property, Third, Servitudes, §3.4 and §3.5

Restatement of Property, Third, Wills and Other Donative Transfers
§10.2

Sisters of Mercy of Cedar Rapids v. Lightner, 274 NW86 (Iowa 1937)

III. The Trial Court Erred in Determining the Legal Description of Vera's Residence

CJS 2d, Executors and Administrators, §398

In Re: Estate of Johnson, 387 NW2d 329 (Iowa 1986)

Talladega College v. Callanan, 197 NW 635 (Iowa 1924)

STATEMENT OF THE CASE

A. Nature of the Case

This is an estate dispute. The issues primarily revolve around the District Court's construction and application of various will provisions pertaining to the deceased's real estate.

B. Course of Proceedings

Vera Cawiezell ("Vera") died testate on April 17, 2018. On April 19, 2018 the Trial Court issued an Order opening an estate for Vera and appointing Phyllis Knoche, Terry Brooks and Jill Brooks as co-executors of her estate. (Petition for Probate; App. P. 28); (Order Admitting Will; App. P. 29)

On October 31, 2018 an application was filed by the co-executors requesting court approval of a legal description for Vera's residence and the imposition of a transfer restriction on Vera's remaining real property. These steps were taken by the executors to comply with provisions contained in Vera's will. (Application for Approval, App. P. 31-40) Following a hearing the District Court issued its ruling on this application on January 11, 2019. This ruling did not address the substantive issues raised by the co-executors but

instead appointed a temporary executor to investigate the same.

(Ruling on Application for Approval, App. P. 52-57)

On March 20, 2019 the temporary executor filed his Motion for Determination which described his efforts and recommendations. These recommendations included utilizing a legal description for Vera's residence which differed from the executors' proposed description and a recommendation that the transfer restriction in Vera's will be incorporated into the legal description of her remaining real estate. (Motion for Determination, App. P. 58) The Court then held an evidentiary hearing and issued its order regarding the temporary executor's recommendations on May 29, 2019. This order adopted the temporary executor's recommendation on the legal description issue but rejected the recommendation that the ownership restriction be included in the same. (May 29 Order, App. P. 83) Rule 1.904 motions were then filed and ruled on by the Court on June 24, 2019 (June 24 Order, App. P. 90)

This appeal was then timely filed on July 23, 2019. (Notice of Appeal, App. P. 93)

C. Statement of Facts

Vera E. Cawiezell (“Vera”) died testate on April 17, 2018 at the age of 94. (Inventory; App. P. 15) Her will appointed her friends Phyllis A. Knoche, Terry Brooks and Jill Brooks as her co-executors. (Will; App. P. 12) Phyllis Knoche, who at the time was 89 years old, had been close friends with Vera for approximately 75 years. The two met when Phyllis was a high school freshman and Vera was a local teacher who boarded at Knoche’s home. (May 13 Transcript; App. P. 63-64) Co-executor Terry Brooks was also a friend of Vera and her tenant. As such he farmed her 150-acre Muscatine County farm. Co-executor Jill Brooks is the spouse of Terry Brooks (Will; App. P. 12-14)

Vera was a hardworking and frugal person. She was a school teacher. She was also devoted to her beloved farm and was actively involved with her late husband and with Terry Brooks in operating this farm. For example, she assisted with tending her livestock until she was 90 years old. She resided on her farm for her entire life. In addition to the farm she accumulated substantial savings bonds and bank accounts over her lifetime. She had no children. (May 13 Transcript; Page 23-36; App. P. 63-75; Will; App. P. 15; Inventory; App. P. 15-23.

Vera's will was executed shortly before her death and made bequests in favor of Terry Brooks, Greg Ales, who was Vera's distant relative, and Tom and Beth Coronelli, who were Vera's friends. The bequests conveying Vera's farm were interlaced with an option, lease, and transfer restrictions. Vera's will also gave considerable discretion to her executors. The pertinent parts of her will provide as follows:

Item 2. I hereby will, devise and bequeath my residence house and buildings close to home which are a part of my farm residence to my 2nd Cousin, Greg Ales. My executors are further authorized and empowered to determine the boundary lines for the survey of the farm residence. In addition, I give and bequeath all of the household contents located in my home to Greg Ales.

Item 3. I hereby will, devise and bequeath all of my farm real estate located in the Northeast Quarter of Section 21, Township 78 North, Range 4 West of the 5th P.M. in Muscatine County, Iowa, except my homestead referred to in Item 2 above, consisting of approximately 150 acres to my friends, Tom and Beth Coronelli or unto the survivor of them, subject to the restriction that they should not sell or transfer the property outside their immediate family within a period of twenty years after my death. Terry Brooks has been leasing the farm from me under a share crop agreement and I would request that the Coronelli family continue leasing to Terry under favorable terms for his benefit. I further give Terry Brooks the first option to purchase the farm during the twenty year period following my death and I would further request that the terms of sale be favorable for Terry Brooks.

Item 4. I hereby will, devise and bequeath any farm machinery or cows or other livestock that I may own at the time of my death to Terry Brooks. In the event that Terry Brooks owes me any sum of money, including my share of any farm rent owing to me in the year of my death, I hereby forgive any such

indebtedness owing at the time of my death. (Will; App. P. 12-14)

Co-executor Phyllis Knoche was given the residuary of Vera's estate. (Will; App. P. 13)

As explained below, it is the co-executors' view that the Trial Court erred in construing and implementing the above provisions.

D. Routing Statement

It is requested that this appeal be retained by the Iowa Supreme Court as it presents the important issue of whether reasonable restraints on the transfer of real property should be permitted in light of the current Restatement of the Law's view on the same and in light of the Iowa Supreme Court's decision on restrictions on the alienability of donated property in In Re: Coe College for Interpretation of Purported Gift Restrictions ___NW2d___, (Iowa 2019). Accordingly, it is a substantial matter of first impression which should be determined by the Iowa Supreme Court. Iowa Rule of Appellate Procedure 6.1101(c).

ARGUMENT

I. The Trial Court Erred in its Construction and Application of the Lease and Option Provisions Contained in Vera's Will

A. Standard of Review. This is a probate dispute which was determined in equity. Accordingly the standard of review is de novo.

In Re: Estate of Johnson, 387 NW2d 329, 333 (Iowa 1986)

B. Error Preservation. The issue of the construction and application of the option and lease provisions of Vera's will was raised below and decided by the Court's May 29, 2019 order and its Order on 1.904 Motion filed on June 24, 2019. (Orders; App. P. 83, 90)

C. Argument. Vera's will made several distributions in favor of Terry Brooks. Included in these bequests was a provision requesting that Brooks continue to lease the farm property under "favorable terms for his benefit." The will also gave him the "first option to purchase the farm during the twenty-year period following my death" also at "favorable terms." Further, as explained below in Issue II the Coronellis received Vera's farm property subject to a restriction that they cannot "sell or transfer" the property to someone other than a close family member for the twenty year period after Vera's death. Under Iowa law, the lease of farm property is considered to be a conveyance of this property. Dickson v. Hubbel Realty Co., 567 NW2d 427, 430

(Iowa 1997) Accordingly the Coronellis were prohibited from leasing the farm property to a different tenant other than a close family member during this twenty-year period absent the approval of Terry Brooks.

The Trial Court disregarded these will provisions. Instead, it ruled that the only right that Brooks had to the farm property is what it called a right of first refusal which could only be exercised by Brooks during a 90-day period following notice from the Coronellis. The purchase price for the property, according to the Trial Court, would be an agreed upon price or the average value as determined by two appraisals of the property. (May 29 Order, June 24 Order; App. P. 83, 90)

This interpretation is in error for several reasons. First, the 90-day time limit imposed by the Trial Court is contrary to Vera's intent and the clear language of the will. Vera did not intend to limit Terry Brooks' option rights to 90 days. Instead, she wanted this option to continue for 20 years. (Will; App. P. 13) Accordingly the Trial Court erred when it so drastically limited the duration of Brooks' option period.

Secondly, the Court erred in determining what "favorable terms" means. The Trial Court determined that "favorable terms" are limited to allowing Terry Brooks to buy the property at fair market value or at

an agreed upon price during the above-described 90-day time period. However, these court-determined terms are in no way favorable to Brooks, as they provide for no reduction in price. Instead, the Trial Court should have retained the 20-year option period desired and established by Vera and determined that “favorable terms” should be a price less than fair market value. Appellants believe that a 25% reduction from fair market value is reasonable and is necessary to carry out Vera’s intent. A Trial Court has the ability to determine what “favorable terms” means in situations such as these and it should have done so. See, In Re: Estate of Ohrt, 550 NW2d 181, 184 (Iowa App. 1996); (reversed on other grounds) In Re: Estate of Ohrt, 585 NW2d 259 (Iowa 1998)

Third, the Trial Court should have determined that Brooks has the sole right to lease during the 20-year period following Vera’s death. As explained above, Dickson v. Hubbell makes it clear that a lease is a transfer. And Vera recognized the same as her will restricts the “sale or transfer” of the property. (Will; App. P. 12) (emphasis added) Accordingly the Trial Court should have ruled that Brooks, if he so chooses, has the exclusive right to lease the farm property under the current lease terms for the 20-year period described in Vera’s will.

Finally, the Trial Court erred when it determined that Vera's use of the word "request" in her will was only a non-binding suggestion. (January 11 Order; App. P. 53) Instead, the Trial Court should have ruled that "request" in the context of Vera's will is a binding direction and not a wish. Specifically, Vera's intent to benefit Terry Brooks and maintain her family operation for a 20-year period through the option and lease provisions which she included in her will would be defeated if the Coronellis could lease the property to others or disregard Brooks' option rights. Accordingly, the word "request" in Vera's will should be found to be mandatory. See, In Re: Hansen's Estate, 264 NW2d 746, 749-750 (Iowa 1978)

II. The Trial Court Erred in its Construction and Invalidation of the Restriction on Transfer Provision Contained in Vera's Will

A. Standard of Review. This is a probate dispute which was determined in equity. Accordingly the standard of review is de novo.

In Re: Estate of Johnson, 387 NW2d 329, 333 (Iowa 1986)

B. Error Preservation. The issue of the validity of the restriction on transfer provision in Vera's will was raised below and decided by the Court's May 29, 2019 order and its Order on 1.904 Motion filed on June 24, 2019. (May 29 Order, June 24 Order; App. P. 83, 90)

C. Argument. Item 3 of Vera's will gives Vera's farm, but not the residence on this farm, to Tom and Beth Coronelli. This bequest, however, also states that it is ". . . subject to the restriction that they shall not sell or transfer the property outside their immediate family within a period of twenty years after my death . . ." (Will; App. P. 12-13) The Trial Court ruled that this restriction was an invalid restraint on alienation and refused to enforce it. (May 29 Order, June 24 Order; App. P. 83, 90)

The co-executors respectfully disagree with this conclusion for the following reasons:

1. *The Coronellis' limited ownership is not a restriction on alienability.* Vera did not convey fee simple ownership of her farm to the Coronellis. Instead she limited the Coronellis' ability to sell the property for a 20-year period. Under Iowa law this bequest is therefore contingent upon the Coronellis' compliance with the condition Vera imposed. If this condition is not complied with the holder of the remainder interest may elect to terminate the Coronellis' partial fee ownership. Helms v. Helten, 290 NW2d 876, 880 (Iowa 1980). A testator has the right to put conditions on a bequest, including conditions that impact the marketability of a property. Guilford v. Gardner, 162 NW 261, 265 (Iowa 1917) Further, in this

case Vera's will intentionally omitted any reference to the "heirs and assigns" of the Coronellis or gave any other indication that she bequeathed fee simple title to them. Instead, the Coronellis' bequest of the farm was unambiguously linked with a clear restriction against transfer. Accordingly this bequest cannot be considered a fee simple bequest.

The fact that the Coronellis own less than full title is important because a reduction in the marketability of Vera's farm property caused by the nature of the limited fee which the Coronellis received is not a restriction on alienability. Instead under Guilford it is merely a practical result of the limited title they hold. See also, Alby v. Banc One Financial, 128 P3d 81, 83-85 (Wash. 2006). Therefore, the Coronellis cannot sell law school's proverbial "full bundle of sticks" not because Vera said they could not but because they do not own all of the sticks. Instead they can only convey the partial interest which they actually own. Guilford v. Gardner, 162 NW2d 261, 265 (Iowa 1917). Because a partial fee interest is less attractive to a buyer than is a full fee interest it may be difficult to sell. But this does not mean that it is not alienable so long as they can find a buyer who is willing to risk the possibility that Phyllis Knoch, who as the residuary grantee

under Vera's will holds the power to enforce the transfer restriction, does not do so.

2. *Transfer restrictions are a use restriction valid for 21 years.* Under Iowa law a restriction on the alienation of property is considered to be a restriction on the use of this property. Sisters of Mercy of Cedar Rapids v. Lightner, 274 NW 86, 92 (Iowa 1937). This Sister of Mercy decision and the Guenther v. Roche, 29 NW2d 222, 223 (Iowa 1947) decision cited by the Trial Court were issued prior to the legislature's enactment of Code §614.24 which permits use restrictions to be in effect for a period of 21 years. Further, the statutory definition of "use restriction" is broad and includes all limitations on use. Code 614.24(5) Since Sisters of Mercy determined that restrictions on alienation are use restrictions the limitation on transfer restriction contained in Vera's will is therefore statutorily valid and enforceable for a period of 21 years. Accordingly the Trial Court erred in concluding that it was invalid.

3. *The Reasonable Nature of the Transfer Limitation in the Coronellis' Bequest Makes it Enforceable.* The current and better reasoned view of courts does away with blanket prohibitions against restraints on the alienation of real estate and instead recognizes that restraints on alienation such as in Vera's will are enforceable if

reasonable and necessary to carry out the intent of the grantor. Reasonableness is determined by weighing the utility of the restraint against the consequences of enforcing the restraint. See, Restatement of Property, Third, Servitudes, §3.4 and §3.5. It is clear in the present appeal that the ownership restriction desired by Vera complies with this standard. For example, Vera's will allows the Coronellis to personally do what they want on the farm. Subject to the rights of Terry Brooks they can use it for recreation, they can farm it, or even sell or gift the property to a close family member. And, perhaps most importantly, this ownership restriction is only valid for 20 years. Under these circumstances the ownership limitation desired by Vera is a reasonable restraint and therefore is enforceable. Further, Vera's restriction on transfer is based on the desire to maintain her cherished farm operation as it existed at the time of her death, including Terry Brooks' continued tenancy and stewardship of the same, for a brief period of time following her death. Indeed, in Item 4 of her will she even gave Terry Brooks her cows and tractor so that her family farm can continue to function as it had for many decades. (Will; App. P. 13) Vera did not own just a generic building. She instead owned what to her was a precious family farm which she wanted to keep functioning for a brief time period following her death. She also intended to give the other

members of the Coronelli family the enjoyment and benefit the farm provided, and not just Tom and Beth Coronelli. Accordingly she structured a 20-year period for all of the Coronelli family to enjoy the use of the farm free of the threat of sale and to allow close family members to buy it if Tom and Beth Coronelli desired to sell. And, as stated above, Vera also obviously intended to benefit Terry Brooks through the lease, option, livestock and other provisions she included in her will. Accordingly, the desire to keep control of the farm within a small group of owners for a limited time was very reasonable as it briefly prevented control of the farm from falling into the hands of strangers who may not be sympathetic to the Coronelli family members or to Terry Brooks, or even to the proper husbandry of her farm. It goes without saying that Iowa has a long tradition of recognizing and protecting its farms and agriculture heritage, a tradition which underlies and demonstrates the considerable social utility of the transfer restriction Vera chose.

The Restatement section discussed above applies to commercial arms-length transfers of real estate. The present appeal, however, involves a bequest. In the context of bequests the Restatement is even more protective of a transferor's intent than in the commercial transfer context. Specifically, the Iowa Supreme Court has recently addressed

restrictions on alienation in the context of an inner vivos gift of personal property to a charitable organization. In Re: Coe College for Interpretation of Purported Gift Restriction, ___NW2d___, _____ (Iowa 2019). On page 13 of this decision the Supreme Court adopted the view of §10.2 of Restatement of Property, Third, Wills and Other Donative Transfers and enforced a perpetual use restriction against alienation because doing so was necessary to carry out the intent of the deceased donor. The Restatement applies the same logic and rule of law to a testamentary bequest as it does to an inner vivos gift. For example, the title of the Restatement, “Wills and Other Donative Transfers” (emphasis added) demonstrates that a bequest is simply one type of donative transfer. Further, the comments to §10.2 make it clear that real estate transfer limitations contained in a will are analyzed as a restriction on a donative transfer and that whether or not the recipient of a bequest is a charity is not controlling. See, §10.2 Comments e, g, and h. This court should do likewise, as it would be blatantly inconsistent to state in Coe College that the intent of a donor who makes a restrictive inner vivos gift and then dies will be respected while the intent of a testator who does the same will be ignored.

In summary, Vera obviously intended there to be a limitation on who could own her farm so that her farm operation could briefly

continue after her death. This restriction was very rational in light of her overall estate plan and love for her farm. Accordingly the transfer restriction in her will is valid and should be enforced regardless of whether Vera's will is analyzed as a commercial or a donative transfer.

Finally, a violation of the transfer restriction in Vera's will could result in the farm property passing to Phyllis Knoche under the residuary clause if Knoche took action to do so. This is because the restrictive language used by Vera created a fee simple subject to a condition, thereby giving Knoche the power to acquire the farm if the Coronellis violate this restriction. Helms v. Helten, 290 NW 2d 876, 880 (Iowa 1980) The interest held by Knoche is therefore a non-vested interest subject to the rule against perpetuities. However, since the transfer limitation period ends 20 years after Vera's death, it is enforceable. Iowa Code §558.68(i).

For all of the above reasons the Trial Court's decision to invalidate the transfer restriction in Vera's will should be reversed.

III. The Trial Court Erred in Determining the Legal Description of Vera's Residence

A. Standard of Review. This is a probate dispute which was determined in equity. Accordingly the standard of review is de novo.

In Re: Estate of Johnson, 387 NW2d 329, 333 (Iowa 1986)

B. Error Preservation. The issue of the appropriate legal description to use for Vera's residence was raised below and decided by the Court's May 29, 2019 order and its Order on 1.904 Motion filed on June 24, 2019. (May 29 and June 24 Orders, App. P. 83, 90)

C. Argument. Under Item 2 of her will, Vera gave her "residence house and buildings close to home which are part of my farm residence" to Greg Ales. Historically Vera's real estate had always been one parcel and accordingly there was no separate legal description for the residence property bequeathed to Mr. Ales. Vera's will clearly recognized this and "authorized and empowered" her executors to "determine the boundary lines for the survey of the farm residence." (Will; App. P. 12)

The executors promptly pursued their responsibility to determine these boundary lines. They commissioned a surveyor who prepared a legal description and plat for a one-acre rectangular tract. They then requested that this legal description be approved by the Court. (October 13 Application; App. P. 31) On its own motion the court then appointed Attorney Gary McKenrick to be temporary executor concerning the boundary issue and delegated to him the task of creating a legal description. (Ruling on Application; App. P. 55) McKenrick recommended a different legal description which the trial court

eventually approved. The major difference between these two descriptions is that McKenrick's description places a garage on the Residence Property while the executors' proposal assigns this garage to the Farm Property. (May 29 Order, June 24 Order; App. P. 83, 90)

The co-executors contend that the description they proposed should have been adopted by the Trial Court for the reasons stated below.

First, it is clear that Vera wanted the executors to have the discretion to make the boundary decision. Terry Brooks and his wife, as Vera's tenants on the farm, were the persons with the most knowledge about what buildings are best allocated to the farm and which are associated with the residence. Likewise, co-executor Phyllis Knoche, Vera's friend of 75 years, frequently visited Vera on her farm and undoubtedly was familiar with it as well. The three co-executors accordingly were the most informed as to what Vera desired. (May 13 Transcript Pages 23-39; App. P. 63-79) By contrast the Coronellis, who were bequeathed the farm property, live in the Chicago area. (Inventory; App. P. 15)

Further, there is clear record evidence supporting the co-executors' determination of the boundaries. The contested garage, for example, is on the "farm side" of the existing picket fence which

historically divided the Farm Property from the Residence Property. Therefore determining that the garage is part of the Farm Property is consistent with the distinction traditionally made by Vera. (May 13 Transcript Pages 35-36; Ex. C-E; App. P. 75-76). Likewise keeping the garage as Farm Property would allow the existing access to the farm to remain and allow the traditional flow of farm operations to continue while at the same time allowing the separate driveway closer to the residence to continue to serve the Residence Property. (Transcript Page 50) Additionally the garage building is further distant from the residence than are several other buildings. (Exhibits C-E, App. P. 75-76) Vera's will provides that only buildings which are "close to" the residence are to convey with the residence. (Will; App. P. 12, Transcript P. 26-27; App. P. 67). Because of the greater distance between the home and the garage the executors therefore properly determined that it should be part of the Farm Property. Additionally, any need for the Residence Property to continue to be serviced by the well and electrical service on the Farm Property can be accommodated with a simple easement agreement.

Finally, the Trial Court's concern that there was a conflict of interest with the executors is misplaced. Terry Brooks, if he exercises his option to buy the farm, will need to pay for the same at a price which

factors in the value of the garage. And Vera obviously was aware that the co-executors benefit under her will but nevertheless appointed the co-executors to be her fiduciaries. Accordingly any conflict was anticipated and approved by Vera. And, perhaps most importantly, the co-executors did not unilaterally engage in self-dealing. Instead, they complied with their mandate in Vera's will to determine the boundaries and submitted their view on the boundary issue to the Trial Court for its approval. Under these circumstances the Trial Court should have allowed the executors to exercise their discretion. See, Talladega College v. Callanan, 197 NW 635, 638 (Iowa 1924). Indeed, by the Trial Court's logic any residuary beneficiary would be precluded from acting as executor because an executor has the ability to deny claims and to otherwise increase the value of his or her residual share. Because many testators make wills which name their spouse or other person they are close to as both executor and residual beneficiary refusing to allow an executor to exercise his or her discretion simply because this carries the potential for abuse will frustrate the existing estate plans of many Iowans. Instead, the better view, and one that has already been adopted by Iowa in Talladega College, is that the executor should be allowed to carry out the discretionary provisions of a will absent clear evidence of actual fraud or improper self-dealing.

The black letter rule of law is consistent with Talladega College and states that the authority and discretion granted executors is to be given wide latitude by the courts unless there is actual fraud or proven abuse of discretion. CJS 2d, Executors and Administrators, §398. The Trial Court recognized that this level of misconduct was entirely absent in this case when it stated that it “in no way doubted the integrity or honor” of the co-executors.” (January 11 Order; Page 2-3, App. P. 53-54) Therefore, the Trial Court erred when it failed to approve the legal description proposed by the executors.

CONCLUSION AND REQUESTED RELIEF

The Trial Court erred when it misconstrued the applicable provisions of Vera's will. The co-executors therefore request that the Trial Court's decisions be reversed and that the following relief be granted:

1. That Vera's will be construed as providing sole lease and option rights in favor of Terry Brooks and that the "favorable terms" provision of Vera's will be properly construed.
2. That the term "request" contained in Vera's will be construed as mandatory.
3. That the provision in Vera's will restricting transfer be determined to be valid and binding.
4. That the legal description proposed by the executors be approved and ordered implemented.

REQUEST FOR ORAL ARGUMENT

Appellants request to be heard at oral argument in this matter.

Respectfully Submitted,

BY: /S/ *GREGG GEERDES*
GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax
geerdeslaw@peoplepc.com
ATTORNEY FOR APPELLANTS

CERTIFICATE OF COMPLIANCE

1. This reply brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

 this reply brief contains 5,581 words, excluding the parts of the brief exempt by Iowa R. App. P. 6.903(1)(g)(1) or

 this brief uses a monospaced typeface and contains _____ lines of text, excluding the part of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in size 14 Times New Roman type face,
or

this brief has been prepared in a monospaced typeface using size _____ with _____ typeface.

/S/ GREGG GEERDES
Signature

March 5, 2020
Date

Respectfully Submitted,

BY: */S/ GREGG GEERDES*
GREGG GEERDES
Dey Building
105 Iowa Avenue, Suite 234
Iowa City, Iowa 52240
(319) 341-3304 Telephone
(319) 341-3306 Fax
geerdeslaw@peoplepc.com
ATTORNEY FOR APPELLANTS