Supreme Court No. 18-1235
Audubon County District Court No GCPR008999

IOWA SUPREME COURT

In the Matter of the Guardianship and Conservatorship of Marvin M. Jorgensen, Ward

Roxann Wheatley, Rick Wheatley, and Dallas Wheatley
Appellants

Date of District Court Decisions: April 27, 2018, and June 21, 2018

ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR AUDUBON COUNTY
HONORABLE KATHLEEN A. KILNOSKI, DISTRICT COURT JUDGE

Appellants' Final Reply Brief

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **The Formation of the Guardianship and Conservatorship is Irrelevant to the Issues to Be Decided on Appeal**

II. **The Wheatleys' Leases Were Consistent with the Ward's Prior Course of Dealing and The Conservator Did Not Breach its Fiduciary Duty in Entering the Leases**

A. Additional Approval of the Family Farm Leases Was Not Necessary Because the Conservator Had Already Been Granted Legal Authority to Execute the Leases.

Iowa Code § 633.647(2) (2018)

B. The Wheatleys Made No Misrepresentations to the Conservator Nor Did They Provide Inaccurate Information to the Conservator in Drafting of the Leases

In re Brice's Guardianship, 8 N.W.2d 576, 580 (1943)

C. SNB Did Not Breach Its Fiduciary Duty in Entering into Family Farm Leases.

Alexander v. Buffington, 23 N.W. 754 (Iowa 1885)

III. The Family Farm Leases Were Not Reformed but Were Terminated in Violation of Iowa's Longstanding Farm Lease Law

A. The Entirety of the Chappel Farm was Not Enrolled in CRP and Terminating the Written Lease to Dallas Wheatley for the Crop Acres on the Chappel Farm Violated Iowa Law

Kettler v. Security Nat. Bank of Sioux City, 805 N.W.2d 817, 821 (Iowa App. 2011)

B. The Entirety of the Chappel Farm was Not Enrolled in CRP and Terminating the Written Lease to Dallas Wheatley for the Crop Acres on the Chappel Farm Violated Iowa Law

Kettler v. Security Nat. Bank of Sioux City, 805 N.W.2d 817, 821 (Iowa App. 2011)

IV. The Evidence Presented at the Trial in this Matter Clearly Showed that the Ward Intended to Rent the Corning Pasture to Appellant Dallas Wheatley

ARGUMENT

I. The Formation of the Guardianship and Conservatorship is Irrelevant to the Issues to Be Decided on Appeal

While the issue of the formation of the Guardianship and Conservatorship are irrelevant to the issues presented to this Court, all Appellees included the issue in their proof brief implying some sort of improper conduct on the part of Roxann Wheatley necessitating a response in this Brief. In December of 2016, a Voluntary Petition for the Appointment of a Guardian and Conservator was filed with the Court (App. at 12). No one in this matter has made a claim that the Guardianship and Conservatorship isn't necessary or proper and in fact all of the children of the Ward (Marvin) agreed to the appointment of the parties that were ultimately appointed as Guardian and Conservator. (App. At 67). Because the formation of the Guardianship and Conservatorship is not at issue for this Appeal, the only reason Appellees have for raising this issue or any issue related to the Wheatleys' attorneys is to attempt the cloud the view of the real issues on appeal and to throw stones, so to speak, at

the Wheatleys, both motives that are improper and unprofessional. The issue before this Court on Appeal is whether the District Court erred in terminating written farm leases and the arguments should be tailored to those issues.

II. The Wheatleys' Leases Were Consistent with the Marvin's Prior Course of Dealing and The Conservator Did Not Breach its Fiduciary Duty in Entering the Leases.

The Appellees focus much of their briefs on testimony from the two day trial wherein, both Michael Jorgensen and Mark Jorgensen testify that the family farm leases signed in August of 2017 were not consistent with the Marvin's prior course of dealing and that the family farm leases showed a breach of fiduciary duty on the part of the Conservator both due to the reduced rental rates and failure to get Court approval of the executed leases. These contentions are not supported in the record or by law.

A. Additional Approval of the Family Farm Leases Was Not Necessary Because the Conservator Had Already Been Granted Legal Authority to Execute the Leases.

Iowa Code Section 633.647 sets for the powers of a Conservator subject to Court approval. Among those enumerated powers is the power to execute leases. Iowa Code § 633.647(2) (2018)(emphasis added). Security National Bank (SNB), as Conservator had the authority to execute the family farm leases pursuant to the Court's Order dated June 2, 2017 in which the Court stated, "The Conservator is authorized and directed to execute and enter into any and all agreements, leases and

instruments, and to perform all other acts necessary or appropriate to manage the Ward's farm land." (App. at 93). The Court's Order couldn't be more clear and all encompassing.

The Appellee's position is that SNB was authorized to execute the leases, but that approval of the executed lease was still necessary to validate those leases. If this Court were to follow that logic, no lease executed by a Conservator with court approval for the execution would ever be valid and a tenant would never be able to rely on a Conservator's signature even when proper authority had been granted by the Courts. The family farm leases were drafted in accordance with the Family Settlement Agreement and Family Recommendation that was approved by the Court and the then acting Guardian Ad Litem(GAL). (App. at 400, March 14, 2017 Tr., p. 38; App. at 65).

The Appellees would have the Court believe that James Mailander, acting as the GAL at the time the Family Settlement Agreement was entered into and approved, only approved of the form of the Family Settlement Agreement and not the actual terms of the Family Settlement Agreement and Family Recommendation attached to the Family Settlement Agreement. The acting GAL was the one who applied to the Court to approve the Family Settlement Agreement and the Family Recommendation attached to the Family Settlement Agreement. (App. at 65). If the GAL didn't approve of the terms of the Agreement or Recommendation, he wouldn't

have filed an application asking the Court to approve the same. While the Wheatleys understand that the successor GAL, Clint Hight, may have had a difference of opinion with regard to the family farm leases as referenced by the GAL statement quoted in the Appellees brief, the GAL at the time the Family Agreement was approved and the leases were executed had provided his approval in filing the Application to approve the Family Settlement Agreement and Family Recommendation attached to the Family Settlement Agreement. (App. at 67; App. at 77; App. at 65). Again, if this Court were to follow the logic of the Appellees, no written agreement entered into by a Conservator with court authority for execution could ever be relied upon by the parties for fear that a successor GAL could be appointed and have a different viewpoint and seek to reform and/or terminate those agreements.

Proper authority was granted to SNB to execute the Family Farm Leases and no additional Court approval was needed and therefore, any argument that the family farm leases were subject to termination or reformation because of the failure to get the secondary approval after the leases were signed is without merit. (App. at 93).

B. The Wheatleys Made No Misrepresentations to the Conservator Nor Did They Provide Inaccurate Information to the Conservator in Drafting of the Leases

The Appellees spend considerable time in their briefs citing to transcript testimony in which both Michael and Mark Jorgensen testified that at the time they

entered into the leases, they knew that the $40 reduction in rent was not consistent with the Ward's prior course of dealing as to both Michael and Mark. There are no similar citations from the record in Appellees' briefs to any testimony of the Wheatleys, because the Wheatleys have never misrepresented to the Court or to the Conservator what Marvin's prior course of dealing was with regard to the Wheatleys' leases and farming operations. Appellant Rick Wheatley testified that some years Marvin and the Wheatleys entered into a profit-sharing arrangement with regard to the farm land and other years they had a cash rent lease. (App. at 400, March 14, 2018 Tr., p. 239). Rick further testified that when Marvin and the Wheatleys operated on a cash rent lease that the rental rate was reduced by $30 to $40 per acre. (App. at 400, March 15, 2018 Tr., p. 13).

Additionally, Roxann Wheatley testified that in conversations with Marvin prior to his stroke that he had referenced wanting to give his kids a reduction in rent of up to $50 per acre. (App. at 400, March 14, 2018 Tr., p. 213). Mark Jorgensen's testimony was also consistent with regard to the Ward's intentions with regard to reductions in rent as Mark testified that at one time his dad told Mark he wanted to give his kids a $25 to $50 reduction per acre in rent. (App. at 400, March 15, 2018 Tr., p. 114). Even Marvin's longtime office manager Nancy Moore, testified that it was Marvin's intention to make each of the leases with his children a cash rent lease and to give them all an equal discount. (App. at 400, March 14, 2018 Tr., p. 92-93).

The Family Recommendation of $40 below ISU land survey rental rates is consistent with Marvin's prior course of dealing with the Wheatleys and consistent with Marvin's intentions as communicated to both Roxann Wheatley, Mark Jorgensen and Nancy Moore.

The Wheatleys commitment to honoring Marvin's prior course of dealing is evident in trial testimony and the Wheatleys' action. As the Appellees point out in their brief, Rick and Roxann Wheatley has asked SNB to allow Rick and Roxann to rent an additional 2,247.53 acres from Marvin that had historically been rented to Mr. Burgmaier. Rick and Roxann Wheatley offered to pay full price for those acres and not take any family reduction as evidenced by an email from SNB on October 11, 2017. (App. at 400, March 15, 2018 Tr., p. 36). The Wheatleys have never represented to the Court or to SNB anything but what their prior course of dealing was with Marvin and have never asked for anything different than their prior course of dealing with Marvin.

Appellees also assert that Marvin never made gifts to his children and had no intention of making a gift in the form of reduced rent. As stated above, the testimony at trial clearly showed that Marvin intended to provide a reduced rental rate to his children. SNB testified that it was clear that Marvin had previously given his children reductions in rent and that those reductions in rent could be classified as a gift. (App. at 400, March 14, 2018 Tr., p. 69). Whether the Appellees refer to it as

a reduction in rent or a gift is of really no consequence because the practice was consistent with Marvin's prior course of dealing. In conservatorships, the controlling principle is that the court will act with reference to the incompetent and for his benefit as he would probably have acted if sane. *In re Brice's Guardianship*, 8 N.W.2d 576, 580 (1943).

The Appellees also assert that the Wheatleys misrepresented the prior course of dealing with regard to corn stalks and Michael Jorgensen's use of corn stalks for grazing. However, SNB testified that a letter was sent to SNB on behalf of the Wheatleys explaining the prior course of dealing with regard to the corn stalks and that the letter was received prior to any family farm leases being drafted. (App. at 400, March 14, 2018 Tr., p. 73).

As the Court noted in its June 21, 2018 Order, none of Marvin's children or grandchildren knew exactly what the arrangements were with others. (App. at 620). It is therefore impossible for either Michael or Mark to know or to testify as to whether the farm leases that are the subject of this appeal were consistent with Marvin's prior course of dealing with the Wheatleys. For this reason, Wheatleys made every effort to inform the Conservator of Marvin's prior course of dealing as it related to the Wheatleys' leases and were confident and remain confident that the Wheatleys' leases signed in August of 2017, which were terminated by the Court, are in fact consistent with Marvin's prior course of dealing with the Wheatleys. No

misrepresentation on the part of the Wheatleys occurred and therefore there was no legal basis for the District Court to terminate the Wheatleys' leases.

C. SNB Did Not Breach Its Fiduciary Duty in Entering into Family Farm Leases.

Appellees, in their brief, also criticize the rental rates published in the Iowa State University (ISU) Land Rent Survey as not accurately reflecting fair market value and imply that it was a breach of fiduciary duty for SNB to execute leases containing rental rates at $40 below the ISU Land Rent Survey. Appellees even cite to a case in which beneficiaries of a Will seek to void a lease because the rental rate was set too low, creating a financial hardship to the Ward. However, the *Alexander v. Buffington* case does not provide precedent for invalidating a lease based on the rental rate and the case be distinguished from this case. *Alexander v. Buffington*, 23 N.W. 754 (Iowa 1885). In the *Alexander* case, the Court invalidated the lease because the conservator executing the lease did not have court authority to do so. *Id.* The lease was not terminated by the Court because the Court felt the rental rate was too low. *Id.* Additionally, the *Alexander* case did not include a lease for farm land. Farm leases in Iowa are treated much differently than other leases and are subject to an entire code section with regard to administration and termination of farm leases as set forth in Iowa Code Chapter 562. Accordingly, the *Alexander* decision provides no controlling precedent applicable to this case.

While the Appellee GAL has provided financial information regarding the difference in rents collected at the $40 reduction from ISU rates versus the $25 discount from Farmers National rates, no one has alleged that the $40 reduction would create a financial hardship for Marvin or that he wouldn't have enough funds or assets to satisfy liabilities. Additionally, SNB had all of Marvin's historical financial information and it is presumed that SNB in fulfilling its duties as conservator could have used those historical document to determine whether the rental rates were consistent with Marvin's prior course of dealing. (App. At 400, March 14, 2018 Tr., p. 87). SNB has made no indication to the court that the rental rate was inconsistent with Marvin's prior course of dealing based on his historical financial records and the docket is also void of any pleading stating that the reduced rental rate will cause financial ruin for Marvin as was the case in *Alexander*. While the funds collected at the $40 below ISU rates is considerably less than what Marvin would collect if rent was $25 below Farmers National rates, the overwhelming evidence shows that the $40 below ISU rates was in fact consistent with Marvin's prior course of dealing as to the Wheatleys and consistent with Marvin's intentions as communicated to Roxann Wheatley, Mark Jorgensen and Nancy Moore. (App. at 400, March 14, 2018 Tr., p. 92-3 and 213; App. at 400, March 15, 2018 Tr., p. 114).

While the Appellees may criticize the ISU Land Rent Survey, SNB testified that ISU rates are the standard rates used by fiduciaries in determining rental rates for farm land. (App. at 400, March 15, 2018 Tr., p. 55). SNB further went on to say that they don't consider what neighboring landowners are paying because the "ISU survey is the one that carries." *Id.* Appellees have claimed that the ISU values are low based on testimony from Farmers National representatives and based on rents paid by non-family farm tenants for other ground owned by Marvin. As SNB's attorney testified, the non-family farm rates were not negotiated, but instead the rates paid by the non-family members were the rates offered by those tenants, not demanded by the bank. (App. At 400, March 15, 2018 Tr., p. 92). Additionally, Farmers National representatives had testified that ISU rates are low, but Farmers National has a vested interest in keeping rental rates has high as possible as their fees are collected on a percentage of the rent paid. (App. At 400, March 15, 2018 Tr., p. 127-128). Using the ISU rental rate survey when it is the standard for fiduciaries in combination with Marvin's prior course of dealing, does not indicate a breach of SNB's fiduciary duty just because other tenants are willing to pay a higher rate. It is well known that farmers compete for rental ground and often try to outbid competitors in hopes of getting the ground. Just because other tenants are willing to pay more shouldn't be grounds to terminate signed, written farm leases or make a

determination that the ISU land rent survey cannot be used to determine rental rates in a conservatorship.

While Appellees state in their brief that SNB felt that they were breaching their fiduciary duty in entering into the family farm leases, that simply is not true, there was no breach of fiduciary duty found. SNB testified that it did not feel that it had done anything that would warrant removal of the bank as Trustee and in fact a Motion was filed to remove the bank as Trustee and the Court after hearing all the evidence declined to remove SNB and declined to find that SNB had breached its fiduciary duty. (App. At 400, March 14, 2018 Tr., p. 48,; App. At 627).

III. The Family Farm Leases Were Not Reformed but Were Terminated in Violation of Iowa's Longstanding Farm Lease Law

The Appellee GAL also states in his brief that the leases were not terminated but reformed stating that the Court had authority to reform the leases because the leases were based on misrepresentation. All claims of misrepresentation have been addressed previously in this brief. Additionally, Appellee GAL in his statement of facts portion of the brief acknowledges that the leases were terminated, stating, "The Court Order dated April 27, 2018, adopted many of the GAL's recommendations including dissolution of the Family Council and termination of the family leases." (Appellee GAL Proof Brief, p. 16). The Appellees also contend that this appeal cannot be reviewed only with regard to Iowa farm lease law. Without proof of misrepresentation on the part of the Wheatleys, there is no other

basis to reform the leases and the validity of any termination of the farm leases should be determined in accordance with Iowa farm lease law found in Iowa Code Sections 562.5 through 562.7. Appellee's complete disregard for Iowa's longstanding farm lease law is a failure to apply the law applicable to this appeal.

A. Farm Leases Are Treated Differently Than Any Other Lease and the Specific Laws Related to Farm Leases Should Be Applied to this Case

The Wheatleys farm leases were signed in August of 2017. (App. at 330; App. at 360). The leases included a term of the crop year 2017 through March 1, 2030 consistent with Marvin's Last Will and Testament and also included a rental rate of $40 below the ISU rental rate survey consistent with the Family Recommendation attached the Family Settlement Agreement approved by the Court. (App. at 330; App. at 360; App. at 67; App. at 77; App. at 78). By Order of this Court, the leases for 2019 were to only be an annual lease with the rental rate set at $25 below market rate as determined by Farmers National. (App. At 623). While the Appellees want to characterize this as a reformation of the lease, it in effect is a termination of the lease for crop years 2019 through 2030 and all material terms agreed to by the Conservator SNB and the family farm tenants. Its clear by the Court's Order and by the subsequent actions of the parties that the leases were in fact terminated, not reformed. The Court's Order was a termination of all major terms of the lease which the Wheatleys and SNB had agreed to and which were lawfully entered into with the

Conservator pursuant to the Court's approval. (App. at 330; App. at 360; App. at 93). The Wheatleys fully briefed Iowa's farm lease law in their initial brief and provided overwhelming evidence that the termination of the Wheatleys' leases was in violation of Iowa's longstanding farm lease law and will not reiterate those arguments in this Reply Brief. If, however, for arguments sake only, that the Court's Order was a reformation of the leases instead of a termination of the leases, the only legal basis for reforming the leases, as acknowledge by and argued by Appellees, would be if the leases were formed on fraud or misrepresentation, claims that have already been fully addressed in this brief. Appellees lack any evidence of fraud or misrepresentation on the part of the Wheatleys and the District Court never made any findings of fraud or misrepresentation. (App. at 617). While Appellants agree that this Court's review is de novo, appellate courts with give deference to the trial court factual findings but are not bound by them. *Kettler v. Security Nat. Bank of Sioux City*, 805 N.W.2d 817, 821 (Iowa App. 2011). Based on the District Court's lack of finding of any misrepresentation or fraud on the part of the Wheatleys combined with the lack of any evidence of misrepresentation of fraud on the part of the Wheatleys, there is no legal basis to reform the Wheatleys' farm leases and instead the leases as signed in 2017 should be reinstated.

B. The Entirety of the Chappel Farm was Not Enrolled in CRP and Terminating the Written Lease to Dallas Wheatley for the Crop Acres on the Chappel Farm Violated Iowa Law

Appellees misstate the record with regard to the Chappel farm in their brief stating that the entire farm was enrolled in CRP. Again, this is simply not true. At the trial in this matter and at subsequent hearings, it is clear that portions of both the Chappel Farm and the Snake Farm were enrolled in the CRP program but other portions of both of those farms were row crop and had been farmed as row crop for years by Appellant Dallas Wheatley. (App. At 400, March 14, 2018 Tr., p. 257; App. At 403; App. At 400, March 15, 2018 Tr., p. 12). Dallas Wheatley started farming the crop portion of the Chappell farm six to eight months before Marvin's stroke which occurred in October of 2016 (*Id.*; See also App. At 778). Because Dallas Wheatley had been farming the crop portion of the Chappell farm since 2016, the Chappell farm was included in the lease that Dallas Wheatley signed in August of 2017. (App. At 360). There was no allegation of misrepresentation or fraud as it related to the crop portion of the Chappell Farm but instead, the District Court took it upon itself to try and help Michael Jorgensen acquire additional hay ground for his cattle operation by terminating Dallas's lease on the Chappell farm and instead awarding the entire Chappell farm to Michael Jorgensen. (App. At 623). No one can claim that portion of the Court's Order was a reformation of the lease because it clearly kicked Dallas Wheatley as the farm tenant off property. (App. at 360). The

termination of Dallas's lease to the crop portion of the Chappell Farm was clearly in violation of Iowa's farm lease law. (*Id.*).

IV. The Evidence Presented at the Trial in this Matter Clearly Showed that the Ward Intended to Rent the Corning Pasture to Appellant Dallas Wheatley.

As the Appellee pointed out in their brief, the Appellate Court's review is de novo, this Court will give deference to the trial court factual findings but are not bound by them. *Kettler v. Security Nat. Bank of Sioux City*, 805 N.W.2d 817, 821 (Iowa App. 2011). In the spirit of that review, ample evidence was offered at trial in this matter that Marvin intended to lease the Corning pasture to Dallas Wheatley. As stated previously, the *only* evidence as to Marvin's intentions with regard to the Corning Farm came from Dallas and Robert Stougard, Marvin's employee of six (6) years. Mr. Stougard testified that Marvin told him in the fall of 2016 that, "Dallas would be taking [the Corning Farm] over towards the end of the year." (App. at 400, March 14, 2018 Tr. p.117). This testimony was corroborated by Dallas, who testified that Marvin informed him of the same intent. (App. at 400, March 15, 2018 Tr., p. 46). This testimony was not rebutted or contradicted. Additionally, Dallas testified that he turned the only farm land he had for raising cattle into crop ground in reliance on Marvin telling Dallas that Dallas would get the North Corning Farm toward the end of 2016. (App. At 400, March 15, 2018, Tr., p. 47). Dallas also testified that Marvin got him started in raising cattle by calling him in late 2015 and telling him

that four loads of cattle were coming Dallas's way and Dallas was expected to own the cattle and take care of them and did in fact pay Marvin for those cattle. (App. At 400, March 15, 2018 Tr., p. 45). There was no evidence adduced that Mr. Stougard had interest in the case, reason to be dishonest, or any other basis that could have undermined his credibility.

Despite this, the Court decided that Michael—and not Dallas— should lease the Corning Farm, because Marvin previously permitted Michael to use part of the pasture on the property at some point several years beforehand. (App. At 400, March 15, 2018 Tr., p.159-60). Michael admitted that he had not used the property since 2014 before using it without permission in 2017 following Marvin's stroke. (*Id.*). The overwhelming evidence adduced at trial showed that Marvin intended on renting the Corning Farm to Dallas to raise cattle on and therefore the District Court should have revised the leases accordingly in an effort to be consistent with Marvin's intent and prior course of dealing.

CONCLUSION

The District Court committed reversible error by terminating and reforming the Wheatleys' leases to force the Wheatleys to sublease for no consideration, increase the rent, revoke the lease term duration to 2030 in violation of Iowa's longstanding Iowa lease laws, and by haphazardly removing portions of property from Appellant Dallas Wheatley's lease and adding them to Michael's without

evidence or finding of fraud, mistake, unconscionability, or other legal basis to do so. For all of these reasons and for the reasons set for the in the Appellants initial Brief, Appellants respectfully request that the Court to reverse the decision of the District Court's Orders of April 27, 2018, and June 21, 2018, and remand with instructions as follows:

1. To reinstate the Wheatleys' original rents under leases, which are to be calculated at the Iowa State University cash rent for medium quality ground, effective March 1, 2017, less $40.00 per acre per Marvin's past course of dealing;
2. To reinstate the Wheatleys' original lease terms, which were to be extended to the year 2030;
3. To reinstate the Wheatleys' original lease terms with regard to subleasing rights;
4. To rescind termination of Dallas Wheatley's lease on the Chappell Farm.
5. To reform Michael's lease to remove the Corning Farm and add it to Dallas's lease, consistent with Marvin's stated intent.
6. Grant any other relief the Court feels just and equitable.

Cost Certificate

Appellants' counsel certifies that the cost of printing this brief was $0.00.

Certificate of Compliance

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,291 words excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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 Times New Roman in 14 point.

October 24, 2019,

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Certificate of Filing

I, Julie Vyskocil, certify that I did file the attached Appellant's Final Reply Brief with the Clerk of the Iowa Supreme Court by EDMS on October 24, 2019.

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