IN THE SUPREME COURT OF IOWA

NO. 18-1235
Audubon County No. GCPR008999

IN RE THE GUARDIANSHIP AND CONSERVATORSHIP OF MARVIN JORGENSEN, WARD

MARK AND MICHAEL JORGENSEN
Intervenors-Interested Parties-Appellees

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR AUDUBON COUNTY
Honorable Kathleen Kilnoski, Judge

APPELLEES' JOINT BRIEF

ALEXANDER E. WONIO
Hansen, McClintock & Riley
Fifth Floor – U.S. Bank Building
520 Walnut Street
Des Moines, Iowa 50309
E-mail: awonio@hmrlawfirm.com
Phone: (515) 244-2141
ATTORNEYS FOR APPELLEE MARK JORGENSEN

DEBORAH L. PETERSEN
PETERSEN LAW PLLC
The Creston House
215 South Main Street, Suite 301
Council Bluffs IA 51503
Phone: 712.328.8808 ext 301
deborah@petersenlawcb.com
ATTORNEYS FOR APPELLEE MICHAEL JORGENSEN

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT ERR IN REFORMING THE WHEATLEYS' LEASES?

II. DID THE DISTRICT COURT ERR IN REMOVING THE CHAPEL FARM FROM DALLAS WHEATLEYS' WRITTEN LEASE (REFORMATION)?

III. DID THE DISTRICT COURT ERR IN FINDING AGAINST DALLAS WHEATLEY REGARDING THE CORNING FARM?

ROUTING STATEMENT

These Appellees' agree with Appellants in that this case should be routed to the Court of Appeals insofar as it can be resolved by established and existing legal provisions. Iowa R. App. P. 6.1101(3), and does not otherwise qualify for retention by the Supreme Court of Iowa under Iowa R. App. P. 6.1101.

STATEMENT OF THE CASE

Nature of the Case. Although couched by Appellants ("Wheatleys") in a more complicated fashion, this case involves the very limited issue of the District Court's authority to govern a Ward's ("Marvin") farmland by amending farm tenant leases after they were entered into by misleading the Conservator ("Security National Bank").

More specifically, after suffering multiple debilitating strokes, Marvin Jorgensen's children sought to take full advantage. In conspiring to establish rents well-below the market value, and below that which Marvin had ever approved of, the children were successful in having the same endorsed by the

Conservator. Not stopping there, the children continued to push the Conservator, in a limitless tit-for-tat manner, for more favorable lease terms than were ever permitted or envisioned by the Ward, their father.

The two sons, Mark and Mike Jorgensen ("Mark and Mike"), obtained additional information and ultimately had an attack of conscience, and presented these realities to the District Court. The District Court immediately rectified the wrongs, reformed the leases to reflect the Ward's past course, intentions, and protect his interests. The Wheatleys' remain steadfast in their unscrupulous quest for below-bargain-basement rent-at the Ward's expense.

Appellants' take the unforgiving position that it is simply "too bad" that the Conservator was ill-equipped to handle the leases, and that once signed the District Court lacked any authority to remedy the injustice. Mark and Mike take no pride in their role in the exploitation of the unfortunate circumstances.

A finding that the District Court lacks authority to right such a wrong, encourages deceitful profiteering at the expense of ill-informed and unsuspecting Courts, conservators, and those tasked with protecting the Ward and those similarly situated.

Relevant Events of Prior Proceedings. Mark and Mike generally believe Wheatleys referenced most of the relevant formal proceedings before

the District Court. To the extent they are incomplete, inaccurate, or misleading, Mark and Mike effort to demonstrate the same below.

Disposition of the Case in the District Court. The District Court found that the children of the Ward created many issues in this case, with self-interest being one of the expressly identified issues. (App. 619) The Wheatleys argued that the issues with the leases were mere scrivener errors, overlaps, and inconsistencies. (App. 619; 775) The District Court disagreed, specifically finding that the lease rates were "not prudent" in that they were far below market value-further below than the Ward ever envisioned or that his interests' could support. (App. 617-625) The District Court further found that the Family Settlement Agreement should be terminated, the family council disbanded, and that the family tenant leases needed to be re-established. (App. 781)

The District Court found Appellee Michael Jorgensen's testimony on the relevant issues to be credible and consistent with other evidence presented. (App. 777) In sum total, the District Court agreed with Mark and Mike (who admitted to being part of the problem): the children were exploiting Marvin and the unfortunate circumstances presented. (App. 617-625, 775-783)

STATEMENT OF THE FACTS

Response to Wheatley's Statement of Facts. Mark and Mike do not agree with the Wheatleys' Statement of Facts.

We agree that Marvin held considerable farm assets, and operated on a handshake agreement. However, we disagree with Wheatleys' allegation that it is "undisputed" Marvin gave "significant" rental discounts to family members in their leases. (Wheatleys' Proof Brief, p. 9) Not surprisingly, this allegation does not have citation to the record. It should be disregarded as unsupported and self-serving.

Wheatleys also assert that "Marvin filed a Voluntary Petition for Guardian and Conservator requesting the Court appoint Roxann [Wheatley] as guardian and Roxann and Security National Bank as co-conservators." (Wheatleys' Proof Brief, p. 10) While true, this ignores the realities of this process. Roxann, seeking legal advice after Marvin suffered disabling strokes, was directed to Security National Bank ("SNB") who directed her to engage lawyer Marty Fisher as her advocate. (March 14, 2018 Tr. p. 193) She did so, and Mr. Fisher prepared legal documents, including termination of Mark Jorgensen's existing Power of Attorney. (March 14, 2018 Tr. 210) Despite his complete lack of competence, Roxann presented these legal documents to Marvin and deceitfully obtained his signature. (March 14, 2018, Tr. 210) This initiated this legal proceeding as a voluntary

guardianship/conservatorship. No one can say with a straight face that Marvin was capable of signing these legal documents at that time-the racket was underway.

The Wheatleys claim that throughout the trial on march 14 and 15 that "it remained uncontroverted that all parties agreed the…reduction of $40.00 per acre from the ISU standard was Marvin's past course of dealing with family members." (Wheatleys' Proof Brief, p. 14) This is again lacking any citation to the record, and for good reason: its false. As detailed below, the record reflects the exact opposite being urged here. Marvin never allowed, let alone envisioned, such a gift to the family operators. He opposed this approach to earning!

In discussing Marvin's interactions with the now-appointed farm manager, Farmers National, the Wheatleys assert that Marvin "rejected" the proposals. (Wheatleys Proof Brief, p. 16) As before, there is no cite to the record to support this, and it is misleading for the Wheatleys to state that any such affirmative action was taken by Marvin in response to his meetings and the proposals from Farmers National. As outlined below, when his untimely strokes were suffered, Marvin was actively engaged in discussions with Farmers National. (March 15, 2018 Tr. 125) It is self-serving and

disingenuous to allege that the proposals from Farmers National were "rejected."

Supplemental Statement of Facts. Marvin was adamantly against the concept of just "giving" his kids money they did not earn or work for. (March 14, 2018 Tr. 90-91)

For all the things the Wheatleys suggest the Family Settlement Agreement represented, it expressly prioritized: (1) Marvin's intentions and past course of dealing; and (2) SNB's fiduciary duties to Marvin. (App. 64-73)

In attempting to prepare the family operator leases, SNB was forced to rely solely on the tenant family member for the accurate information to complete them. (March 14, 2018 Tr. 10, 27, 60) The Wheatleys did not provide SNB with any prior course of dealing with Marvin. (Id.) Despite what should have been a relatively benign process, the Wheatleys consistently asking for more and more, demanding continued amendment of their leases. (March 14, 2018 Tr. 66, 108) Mark and Mike did not get the same involvement in the formation of their leases. (March 14, 2018 Tr. 110, 144-45; March 15, 2018 Tr. 85)

Upon learning of the additional benefits the Wheatleys were successful in demanding in their leases, Mark and Mike sought the same.

(March 15, 2018 Tr. 89, 99, 104-06) In trying to keep up with the tit-for-tat, SNB described the formulation of the family operator leases as "a fluid state." (March 15, 2018 Tr. 89)

The end result was family operator leases that SNB did not consider reflective of the prior course of dealing and that contravened their fiduciary obligation to Marvin. (March 14, 2018 Tr. 19-21, 36, 61) Mark and Mike, for their part, admitted that ALL the children, including them, were taking advantage of Marvin's circumstances. (March 15, 2018 Tr. 104-106, 161)

The record reflects that SNB was simply not equipped to handle a farming operation of this size or complexity. (March 14, 2018 Tr. 59, 65) As a result, they were forced, in preparing leases, to rely on the Wheatleys' accuracy. (March 14, 2018 Tr. 60) As information became available, it was apparent to SNB that the Wheatleys did not give it the correct information in formulating leases. (March 14, 2018 Tr. 68)

In the end, and what led up to this immediate action, SNB sought Court guidance because it believed it had been duped and that the family operator leases needed to be reevaluated. (March 14, 2018 Tr. 71) The District Court agreed. (App. 617-625, 775-783)

APPELLEES' ARGUMENTS

I. THE DISTRICT COURT DID NOT ERR IN REFORMING THE FAMILY OPERATOR LEASES TO CONFORM WITH

MARVIN'S INTENTION, HIS PAST COURSE OF DEALING, AND AS REQUIRED BY LAW TO PROTECT HIS INTERESTS.

SCOPE OF REVIEW/PRESERVATION OF ERROR

Mark and Mike agree with the Scope of Review and Preservation of Error.

ARGUMENT

The District Court properly evaluated the evidence and concluded that the family operators had taken advantage of Marvin's circumstance. The leases were "not prudent."

Although it is broken down into subparts, in an effort to complicate the issue, the Wheatleys argument can be distilled: they argue that the District Court lacked authority to act upon the family operator leases as it did. Mark and Mike disagree.

At the time of trial, the Wheatleys asserted that the Iowa State University Survey values constituted "fair market value," (March 15, 2018 Tr. 36) yet the record was undisputed in that these survey values were WELL below what the market would set. (March 15, 2018 Tr. 105-06, 134) It is telling to this Court that the Iowa State University Survey Values were NOT utilized in establishing non-family operator rents. (March 15, 2018 Tr. 91) More to the point, the Wheatleys were paying roughly HALF of what a non-family operator paid for the exact same parcel of land! (March 15, 2018 Tr. 8)

Despite the lopsided evidence regarding is unfairness and injustice of the family operator leases, the Wheatleys say that does not matter, and that their ability to secure a signed lease from the overwhelmed Conservator bars any remedy. Mark and Mike disagree. However, before detailing reasons and legal authority for such disagreement, the brothers would be remiss in not pointing out the terrific hypocrisy of the Wheatleys' current position. Prior to the lease issue that is the basis of this action, the Wheatleys, in contesting Mike Jorgensen's position on an ancillary matter, made the following representations to the District Court:

> ***[Roxann Wheatley] doesn't want anything for herself. I want to make that very clear. Her interest is in protecting her father's assets and ensuring that the conservator is upholding its fiduciary obligations under the Iowa Code. She wants to prevent any financial exploitation of Marvin.***
> …
> ***Although a family settlement agreement was approved by the Court in this matter, the ward's children don't have the ability to waive the fiduciary obligation the conservator has under Iowa law.***
> …
> ***It is the duty of the conservator of the estate to protect and preserve the assets and to invest them prudently.***
> …
> ***Even if the ward's prior course of dealing with the children was to provide some sort of extraordinary support to one of his children, that does not mean the conservator can continue doing that.***
>
> ***People can make whatever choice they want about their assets and their money while they have the faculties to do so, but when they do not have the capacity, when a conservator has been appointed to manage their assets for them, the conservator is a fiduciary. They have an obligation to act in that person's best interests.***

> …
> ***So where it is <u>not prudent</u> for Marvin to use his funds to support his child, they should <u>not</u> be doing that.***
> …
> ***That's the long and short of it, and there was simply no evidence provided to the Court to show that this was a <u>prudent</u> management of Marvin's assets.***

-*Wheatleys Lawyer*[1]

(App 284-85)(emphasis added) My how times have changed!

The Wheatleys' claim that their lease, secured through inaccurate and incomplete information, cannot stand. As they argued, in resisting Mike Jorgensen in January, 2018, the Conservator and District Court are required to act in Marvin's best interests. Their claim to the imbalanced and unjust leases do not survive.

More than one hundred years ago, the Supreme Court of Iowa suggested that inadequate rent entered into on behalf of an incompetent ward may be, standing alone, sufficient to authorize cancellation of the resulting lease. *Alexander v. Buffington*, 23 N.W. 754, 66 Iowa 360 (1885). While not needing to conclude that inadequate rent, standing alone, was sufficient to cancel the lease, the Supreme Court of Iowa made it clear this was not to be ignored. *Id.* Under similar circumstances, the Court found a lease with an inadequate yearly

[1] Maybe not surprisingly, this was one of a handful of lawyers that the Wheatleys have cycled through in this case.

rent to be inherently fraudulent, and cheating of the ward's estate. *Id.* These circumstances are present here.

The Court's longstanding precedent is to permit the District Court considerable discretion in the administration of these matters. *In re Brice's Guardianship*, 8 N.W.2d 576, 233 Iowa 183 (1943); *Haradon v. Boardman & Cartwright*, 294 N.W. 770, 229 Iowa 540 (1940)("It must be recognized that a guardian who receives property for his ward receives it and holds it in trust for the ward, to be managed and controlled under the direction of the court making the appointment."). The Court established that property of the ward: "Concededly it is the general rule that the property of a ward in the hands of his guardian is in custodia legis and that it remains in such custody subject to the orders of the court charged with the responsibility therefor." *Id.*

Court direction, discretion, and authority is understood in the nature of the relationship. *Bates v. Dunham*, 12 N.W. 309, 58 Iowa 308 (1882)(All guardianship decision are subject to the discretion of the Court).

The District Court, upon learning of the impropriety and unjust nature of the leases, correctly remedied them. The Wheatley's argument fails for the precise reasons they asserted in resisting another parties' claim in January, 2018 outlined above. *Estate of Leonard, ex rel., Palmer v. Swift*, 656 N.W.2d 132, 146 (Iowa 2003)(We note that a conservator has a statutory duty to

protect the estate of a ward.)(citing, *In re Conservatorship of Peters*, 447 N.W.2d 412, 414 (Iowa App.1989)). The District Court is required to make decisions in the best interest of the ward under the circumstances. *Matter of Conservatorship of Peters*, 447 N.W.2d 412, 415 (Iowa Ct. App. 1989)

II. DID THE DISTRICT COURT ERR IN REMOVING THE CHAPEL FARM FROM DALLAS WHEATLEYS' WRITTEN LEASE (REFORMATION)?

III. DID THE DISTRICT COURT ERR IN FINDING AGAINST DALLAS WHEATLEY REGARDING THE CORNING FARM?

SCOPE OF REVIEW/PRESERVATION OF ERROR

Mark and Mike agree with the Scope of Review and Preservation of Error.

ARGUMENT

The District Court, for all the reasons outlined above, did not err in finding it had authority, and the evidence compelled, these results. *Haradon v. Boardman & Cartwright*, 294 N.W. 770, 229 Iowa 540 (1940)(Concededly it is the general rule that the property of a ward in the hands of his guardian is in custodia legis and that it remains in such custody subject to the orders of the court charged with the responsibility therefor.) *Matter of Conservatorship of Rininger*, 500 N.W.2d 47, 51 (Iowa 1993)(Although the facts of this case do reveal a concerned and caring conservator who believed

he was acting in his ward's best interests, the law places very specific and rigid requirements on fiduciaries. In the present case, the probate court determined that it would not have approved the transactions in question had it been requested to do so. Thus, while we do not doubt the conservator's sincerity and good intentions, a breach of fiduciary responsibility on his part was clearly established.)

CONCLUSION

This Court should **AFFIRM** the District Court's Orders at issue.

APPELLANT'S POSITION REGARDING ORAL ARGUMENT

This matter should be submitted with oral argument, and Appellees Mark and Mike Jorgensen respectfully requests the same. Iowa Rule of Appellate Procedure 6.908.

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

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

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