IN THE SUPREME COURT OF IOWA

IN RE ESTATE OF VERA E. CAVIEZELL

TERRY BROOKS, JILL BROOKS and PHYLLIS KNOCHE,	)	
Co-Executors/Appellants,	)	
v.	)	**S.C. NO. 19-1214**
TOM CORONELLI and BETH CORONELLI,	)	
Beneficiaries/Appellees.	)	

APPEAL FROM
THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY
THE HONORABLE PATRICK A. McELYEA, JUDGE

APPELLEES' BRIEF AND REQUEST FOR ORAL ARGUMENT

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Routing Statement

Appellees disagree with Appellants that this case should be retained by the Iowa Supreme Court for disposition. *See* Iowa R. App. P. 6.1101. As discussed in the argument portion of this brief, Appellants' claim that this case justifies the Supreme Court to revisit and reverse legal principles that have existed in Iowa for 140 years is misplaced. Neither the Restatement (Third) of Property's view on "reasonable restraints on the transfer of real property should be permitted" or the Supreme Court's decision in *In re Matter of Coe College*, 935 N.W.2d 581 (Iowa 2019), bear any basis to reverse the district court. (*See* Appellant's Br. "Routing Statement".)

This case should be transferred to the Iowa Court of Appeals because no basis exists for the Supreme Court to retain this case for appellate review, as provided by Iowa Appellate Procedure Rule 6.1101. Further, this case should be transferred to the Court of Appeals because it involves questions that can be resolved by applying existing legal principles. Iowa R. App. P. 6.1101(3)(b).

Statement of the Case

Nature of the case

This case is an appeal from the district court's ruling in a pending probate case to not enforce the testator's conditions and restrictions on alienation on the

devise of farm ground. The executors appeal seeking enforcement of the restrictions against the devisee's alienation of the land.

Course of proceedings and disposition in district court

Appellees, Tom Coronelli and Beth Coronelli (hereinafter "the Coronellis"), generally agree with course of proceedings as recited by Appellants/Co-executors, Terry Brooks, Jill Brooks, and Phyllis Knoche, but offer this supplement.

Vera Cawiezell ("Vera") died testate on April 17, 2018. (App. at 28¶1.) At the time of her death, Vera owned farm ground. (*See* App. at 12-13¶3.) Terry Brooks had farmed that ground as a tenant for five years prior to Vera's death. (App. at 46:14-18.) In her last will and testament, Vera specifically devised:

> I hereby will, devise and bequeath all of my farm real estate … 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.

(App. at 12-13¶3; *see also* App. at 28¶2, 29-30); *In re Hoagland's Estate*, 203 N.W.2d 577, 581 (Iowa 1973) (defining a "specific devise" as "a gift of 'a designated article or specific part of the testator's estate which is identified and

distinguishable from other things of the same kind, which may be satisfied by delivery of the specific thing or portion.'").

Based on Vera's will, the executors sought court approval of a deed conveying the farm to the Coronellis containing the restrictions prohibiting the Coronellis from selling or transferring the property outside of their immediate family for twenty years after Vera's death. (App. at 36¶5; *see* App. at 12-14.) The Coronellis responded by resisting the executors' actions and requested the court find, as to the farm ground, "that any restrictions in the Last Will and Testament are unfair, unreasonable, and unenforceable." (App. at 41-42.) Another beneficiary of Vera's estate, Greg Ales, also challenged the executors' actions regarding the residence Ales received. (App. at 41-44; *see* App. at 12¶2.) Ales argued that boundary lines in the proposed deed for the residence, adjacent buildings, and the real estate he would receive diminished Ales' devise and violated Vera's intent. (App. at 43-44.)

The court conducted an evidentiary hearing on January 2, 2019, regarding the executors' pending application to approve their version of the respective deeds and the Coronellis' and Ales' respective resistances thereto. (App. at 45:all.) In a ruling filed on January 11, 2019, the district court initially concluded that the executor's application to approve their actions "is, in part, and uncaptioned Application to Approve Self-Dealing." (App. at 54.) The district court then appointed Gary McKenrick, a person who had "no financial or personal interest"

in this action, as executor to determine the extent of the residence Ales received and the farm the Coronellis received. (App. at 54-55.)

On March 20, 2019, McKenrick filed a motion with the court regarding his recommendations to resolve the dispute. (App. at 58-61) Germane to this appeal, McKenrick recommended that the will's restriction on alienation of the farm "is not enforceable." (App. at 61.) However, McKenrick recommended that "the 20-year right of first refusal in favor of Terry Brooks is enforceable and must be incorporated into the deed." (*Id.*) After another evidentiary hearing, the court ruled *inter alia* on May 29, 2019, regarding McKenrick's recommendations pertaining to the farm:

> On the issue of the restraint on alienation provision, the Court finds the provision *is not valid*. "The courts generally will not give effect to a testamentary provision to the effect that a devisee shall not for a period of time sell the property devised." *Guenther v. Roche*, 29 N.W.2d 222, 223 (Iowa 1947). The Court does not find [Iowa Code section] 614.24 controlling. The Court does find it equitable and consistent with the testator's intent to uphold the right of first refusal for Terry Brooks.
> ***
> It is further ordered that Terry Brooks shall retain a right of first refusal on the property and shall be given 90 days notice by the Coronelli's prior to listing the property for sale.

(App. at 83-85 (emphasis added); *see* App. at 58-61; *see also* App. at 12-13¶3.) The Coronellis and the executors timely filed motions per Iowa Civil Procedure Rule 1.904(2). (App. at 86-87, 88-89.) On June 24, 2019, the court amended its previous ruling to state:

> The Court's intent in structuring the right of first refusal in the manner it did was to give Terry the option to purchase the property before it was listed on the open market. The Court finds there does need to be further specificity with the right of first refusal in that Terry shall have 90 days to exercise his right and the price shall be a fair market value price for the property. In the event the parties are unable to agree on an amount, the fair market value shall be determined by an average of two appraisals, one obtained by Terry and one obtained by the Coronelli's. The Court finds this is in keeping with the testamentary intent that the terms of sale be favorable to Terry, rather than forcing him to match an offer from the open market. Once the 90 days has expired or Terry has declined to exercise his right in writing, whichever event occurs first, the property may be listed and sold to a buyer of the Coronelli's choosing.
>
> ***
>
> The Court denies the request for further explanation on the ruling regarding the restraint. It was outlined in the Coronelli's resistance that simply having a right of first refusal does not prohibit the sale in contrast with the other language in the Will which does.

(App. at 91-92.) The executors timely appealed. (App. at 93-95.) The Coronellis did not cross-appeal.

Statement of the Facts

The Coronellis generally agree with the statement of the facts as recited by the executors. All of the other relevant facts will be discussed in the argument.

Argument

Since 1880, Iowa has recognized the rule against restraints on alienation which bars direct restraints on the alienability of present or future vested interests. *McCleary v. Ellis*, 54 Iowa 311, 6 N.W. 571, 573 (1880) ("The only safe rule of decision is to hold, as I understand the common law for ages to have

been, that a condition or restriction which would suspend all power of alienation for a single day, is inconsistent with the estate granted, unreasonable, and void." (citation omitted)); *accord Davidson v. Auwerda*, 192 Iowa 1338, 186 N.W. 406, 407 (1922). This rule applies to testamentary gifts which is the circumstance of this case. *Id.*; *Guenther v. Roche*, 238 Iowa 1348, 1351, 29 N.W.2d 222, 223 (1947) ("The courts generally will not give effect to a testamentary provision to the effect that a devisee shall not for a period of time sell the property devised."); *In re Ogle's Estate*, 146 Iowa 33, 124 N.W. 758, 758 (1910). In voiding the restrictions against the Coronellis' right to alienate the farm, the court relied on that established precedent. (App. at 83-85.)

The executors argue that this rule does not apply or, if it does apply, the rule was amended by the adoption of Iowa Code section 614.24. Finally, the executors argue that if neither of those arguments work, the Iowa Supreme Court should disregard the rule based upon the recent ruling of *In re Matter of Coe College*, 935 N.W.2d 581 (Iowa 2019). None of those arguments have merit. This court should affirm.

1. The district court correctly construed and applied the lease and option provisions contained in Vera's will.

A. Standard or review

The Coronellis agree that this court's review of the district court's decision is de novo. *See Matter of Estate of Johnson*, 387 N.W.2d 329, 332 (Iowa 1986).

B. The district court's construction and application of the lease and option provisions of Vera's will are preserved for appellate review.

The Coronellis agree that that the executors' alleged error of the district court's decision regarding the Coronellis' and Terry Brooks' rights under Vera's will are preserved for appellate review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

C. The district court's determination to limit Brooks' option to purchase the farm is correct.

The executors' appellate argument breaks Vera's devise of the farm to the Coronellis into two parts: 1) the twenty-year restriction on alienation; and 2) Brooks' right of first refusal should the Coronellis sell the farm. The executors first raise error in the district court's decision regarding Brooks' right of first refusal. The key part of Vera's will is:

> 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.

(App. at 12-13¶3.) Construing that language, the court correctly found that Terry Brooks should retain the first right of refusal to purchase the farm as provided in Vera's will. (App. at 90-92.) Regarding the price Brooks must pay, the court also required, if the parties could not agree, the amount would be "an average of two appraisals, one obtained by [Brooks] and one obtained by the Coronelli's."

(App. at 90.) None of the several arguments the executors raise have any merit, and this court should affirm.

Initially, the executors wrongly claim that because "the lease of farm property is considered to be a conveyance of this property … 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." (Appellant's Br. p15 (citing *Dickson v. Hubbell Realty Co.*, 567 N.W.2d 427, 430 (Iowa 1997).) *Dickson* does not stand for that proposition. *Dickson* involved a dispute between a lessor and lessee about the terms of a lease. 567 N.W.2d at 429-30 (construing the lease terms regarding whether buildings must be removed by the lessee). *Dickson* says nothing to the effect that a devisee is prohibited from leasing to a different tenant because the testator may "request" it.[1] (*Compare id. with* App. at 12-13¶3.) Vera's will stated the farm transferred to the Coronellis is "subject to the restriction that they should not sell or transfer

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[1] Brooks' lease is not in the trial record. *See* Iowa R. App. P. 6.801 (detailing what constitutes the record on appeal); *see also Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994) ("Facts not properly presented to the court during the course of trial and not made a part of the record presented to this court will not be considered by this court on review.").

the property outside their immediate family within a period of twenty years[.]" (App. at 12 ¶3.) The express terms Vera used was "sell or transfer." (*Id.*) Vera then mentioned the lease with Terry Brooks in the next sentence. (*Id.*) Therefore, even if the restraint on alienation was valid, which it is not, the plain language of the will shows Vera did not intend the lease to fall under the restriction on "sell or transfer". (*See id.*) Terry Brooks' first right of refusal to purchase the land is a separate provision and has no effect on the lease. Accordingly, the executors' argument that the Coronellis are "prohibited from leasing the farm property … absent the approval of Terry Brooks" is without merit. (*See* Appellant's Br. p14.)

Next, the executors dispute the district court's correct interpretation of Vera's first right of refusal given to Brooks setting out the condition that Brooks had ninety days to purchase the farm if the Coronellis decided to sell on the open market. (Appellant's Br. p14-15.) The executors claim this right is valid for twenty years. (*See id.*) Vera's will allowed for the right of first refusal, but the executors have misunderstood what a right of first refusal is. A right of first refusal, often referred to as a preemption, is not an unlimited right, rather having a right of first refusal "merely requires the owner, when and if he decides to sell, to offer the property first to the person entitled to the preemption. Once the owner decides to sell the property, the preemption ripens into an option." *Knepper v. Monticello State Bank*, 450 N.W.2d 833, 836 (Iowa 1990); *see Trecker v. Langel*, 298

N.W.2d 289, 290–91 (Iowa 1980). Therefore, Brooks' right to purchase the farm becomes an option only when the Coronellis decide to sell the property. *See id.* Until the Coronellis choose to sell, Brooks has no legal rights in the farm. *Id.* If, after having notice of the sale and being given the option to pay the district court's provided price, the right of first refusal terminates. *See id.* The lower court correctly interpreted the language in Vera's will to be a right of first refusal in Brooks' favor. (App. at 90-92.)

Further, the executors cite no legal authority supporting their claimed error and this court should deem the issue waived. *See* Iowa R. App. P. 6.903(2)(g)(3); *Soo Line R. Co. v. Iowa Dept. of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) ("[R]andom mention of [an] issue, without elaboration or supportive authority, is insufficient to raise the issue for [the appellate court's] consideration."); *see also State v. Lyle*, 854 N.W.2d 378, 382 (Iowa 2014) ("We have consistently held an issue "may be deemed" waived if a litigant fails to identify the issue, assign error, and make an argument supported by citation to authority in their initial brief."). The executors casually link their argument to reversing the district court on its invalidation of the restraint on alienation as argued in the next section, but that link fails as the Coronellis argue in argument "2" of this brief.

The executors argue the district court's decision to limit Brooks' right of first refusal to ninety days did not include the "favorable terms" Vera provided

in her will. (*See* Appellant's Br. p15 (citing *Estate of Ohrt*, 550 N.W.2d 181, 184 (Iowa Ct. App. 1996).) The *Ohrt* court did interpret the testator's meaning behind his intent to allow a beneficiary to purchase land under "favorable terms." *Ohrt* at 184. However, the court was bound by the specific and detailed terms provided by the testator, e.g., amount of down payment, time to repay, interest rate accrued on unpaid principle, etc. *See id.* Here, Vera's only guidance was her "request that the terms of the sale be favorable for Terry Brooks." (App. at 12-13¶3.) Vera provided nothing regarding sale price, interest rates, time to repay, etc. (*Id. compare with Ohrt* at 184.) The district court attempted to ensure Vera's intent for "favorable terms" was upheld by setting forth a timeline for notice and a way to come to an agreement on price should there be a disagreement. (App. at 90-92.)

The executors also argue that this court should modify the lower court's ruling to provide "that a 25% reduction for fair market value is reasonable and is necessary to carry out Vera's intent." (Appellant's Br. p15.) Vera left no hint, let alone instruction, as to her intent behind "I would further request that the terms of sale be favorable for Terry Brooks." (*See* App. at 12-13¶3.) Also, why would 25% reduction in price be favorable? Why not 3%, or 60%, or 95%? The executors' suggestion to have the Brooks' purchase price be 25% of fair market value is arbitrary and inequitable. The district court's decision to have the Coronellis and Brooks hire independent appraisers, then have the sale price be

the average of those appraisals, is equitable to both the Coronellis and Brooks. (*See* App. at 90-92.)

The district court noted in its amended ruling that "simply having a right of first refusal does not prohibit the sale in contrast with the other language in the Will which does." (App. at 91.); *see Trecker*, 298 N.W.2d at 291 (providing that a right of first refusal is also subject to the rule against restrains on alienation). Therefore, the court correctly granted Brooks a right of first refusal and reasonably granted a ninety-day period to exercise that right. (*Id.*); *see Trecker* at 291 (noting that factors of determining a "reasonable" restraint).

Finally, the executors argue that Vera's use of the word "request" regarding the "terms of sale be favorable to Terry Brooks" should be "mandatory" rather than suggestive. (Appellants' Br. p16.) They cite *Matter of Hansen's Estate*, 264 N.W.2d 746, 749–50 (Iowa 1978). *Hansen* provides the legal principle that a testator's use of "request" can be interpreted as "precatory": "Words of entreaty, request, desire, wish, or recommendation, employed in wills, as distinguished from direct and imperative terms." *Id.* at 749. "Compliance with a provision which is precatory is not compulsory." *Greer v. Bruck*, 796 N.W.2d 458 (Iowa Ct. App. 2004). The *Hansen* Court noted that "[c]ommonly the problem arises when a testator devises property to a particular person and then addresses a wish to that person. In those situations the likelihood is stronger that the wish is precatory than when it is not addressed to the devisee." *Hansen,* 264

N.W.2d at 749. That is what Vera did in her will. Vera devised the farm to the Coronellis. Then, Vera "request[ed]" the Coronellis "continue leasing" to Brooks, but the Coronellis owned the farm outright. (App. at 12-13¶3.) *See Bradford v. Martin*, 199 Iowa 250, 201 N.W. 574, 576–77 (1925) (holding that phrases such as "wish" are "precatory" and not mandatory, particularly if the request or "wish" would be repugnant to the clause granting the devisee fee simple title). The only condition on the devise was the twenty-year restriction on alienation, but since that restriction violates the rule against restrictions on alienation, that condition is invalid leaving the Coronellis with a fee simple title. (*See* Appellee's Br. argument 2, infra.) Further, Vera's intent has no effect if her intent is legally unenforceable. *See, e.g.*, *Bradford*, 201 N.W. at 576–77. As the condition against alienation is entirely void, the Coronellis took an estate in fee simple, and the trial court was correct in its conclusion there were no further restrictions other than the right of first refusal. *In re Ogle's Estate*, 146 Iowa 33, 124 N.W. 758, 759–60 (1910). As such, Vera's "request" is precatory and not mandatory. *See Hansen's Estate*, 264 N.W.2d at 749; *Bradford*, 201 N.W. at 576–77. Therefore, the court was under no obligation to make the terms "reasonable." However, because the will set forth the terms of the first right of refusal, the court set reasonable guidelines for notice and any disagreements on value where the terms of the first right of refusal were ambiguous. *See In re Edwards' Estate*,

231 Iowa 71, 300 N.W. 673 (1941). The terms provided by the court balance the interests of the parties. This court should affirm.

2. The district court correctly invalidated the restrictions on alienation Vera placed on her devise of the farm to the Coronellis.

A. Standard or review

The Coronellis agree that this court's review of the district court's decision is de novo. *See Johnson*, 387 N.W.2d at 332.

B. Preservation of error regarding the enforceability of a devise conditioned on the restriction of alienation.

The Coronellis agree that that the executors' alleged error of the district court's decision invalidating Vera's restriction on alienation is preserved for appellate review. *See Meier*, 641 N.W.2d at 537.

C. The district court correctly ruled that Vera's restriction on the Coronellis' ability to "sell or transfer the property outside their immediate family within a period of twenty years after [her] death" is not valid.

Vera left the farm to the Coronellis, but she then restricted their ability to sell or transfer that property for twenty years after her death. (App. at 12-13¶3.) That restriction violates Iowa law. *See McCleary*, 6 N.W. at 573 (adopting the rule against restrictions on alienation). The executors' argument asks this court to defy years of established Iowa law. The executors are wrong. The district court committed no error invalidating Vera's restriction on alienation, and this court should affirm.

(1) The Coronellis' ownership of the farm is not limited, and Vera's will's condition is an invalid restriction on alienation.

The executors' argument that "Vera did not convey fee simple ownership of her farm to the Coronellis" is wrong. (*See* Appellants' Br. p17.) By claiming that Vera's restriction on alienation conveys a defeasible title, the executors' argument is circular.[2] In other words, they claim that the restriction on alienation means the Coronellis have less than fee simple title to the farm. The executors' attempt to argue that by having less than fee simple title, the restriction must be valid. (Appellants' Br. p18.) There is no specific condition that must be met for the Coronellis interest in the land to vest. Rather, there is a restriction on who they can sell the property to which falls within the restriction on alienation of property. The restriction's existence does not make the restriction valid. Rather, the restriction is an invalid restraint on alienation and not a condition. Thus, the executors' illogical arguments have no merit.

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[2] The executors' confirm their circular argument by writing: "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." (Appellant's Br. p18.)

Thee executors supplement their argument by claiming that restriction on alienation limits the Coronellis' title – the Coronellis "do not own all of the sticks" so they cannot sell the "proverbial full 'bundle of sticks'". (Appellant's Br. p18 (citing *Guilford v. Gardner*, 162 N.W. 261, 265 (Iowa 1917).) This is still a circular argument. The executors' reliance on *Guilford* offers no help. In *Guilford*, the testator devised land to his son, but if his son "should die without issue living" the land reverted back to the testator's wife. *Id.* at 262. The *Guilford* Court decided that the will's language gave the son a defeasible title and conveyed fee simple title to the son only upon the son's death and the son having living issue at the time of the son's death. *Id.* at 265. The son died childless, so the Court concluded the son's defeasible title reverted to the testator's wife. *Id.* at 265-66. Here, Vera's devise to the Coronellis only created on a defeasible title if the restriction on alienation is valid. An invalid restriction does not make a defeasible title to make that same restriction valid. The executors' argument fails.

(2) A restriction on alienation is not a "use" restriction; therefore, Iowa Code section 614.24(5) does not apply to this case.

The executors' claim that under "Iowa law[,] a restriction on the alienation of property is considered to be a restriction on the use of this property" is wrong. (*See* Appellant's Br. p19.) In support of that claim, the executors cite *Sisters of Mercy of Cedar Rapids v. Lightner*, 223 Iowa 1049, 274 N.W. 86, 92 (1937). *Sisters* does not support that proposition. In fact, *Sisters* supports the opposite. The

Sisters Court stated: "In this state a restraint against alienation in a conveyance of a vested estate in fee simple is void, and this is true though the restraint is for a limited or particular time." *Id.* However, the Court noted a key exception to the rule: "gifts to charitable uses do not come within the prohibition of the rule." *Id.* Because the restriction on alienation in *Sisters* concerned a gift for a charitable use, the restriction was valid. *Id.* Again, Vera's will has nothing to with charity or any charitable use. (*See* App. at 12-14.) So *Sisters* supports the trial court's decision that the restriction on alienation is invalid. *Sisters*, 274 N.W. at 92.

More importantly, *Sisters* never recognizes that a restriction on alienation is a "use" restriction. *See id.* Other than *Sisters*, the executors only other citation to any legal authority in support of their argument is Iowa Code section 614.24(5) (2019). (*See generally* Appellant's Br. p19.) The executors then make another wrong claim: "Further, the statutory definition of 'use restrictions' is broad and includes all limitations on use. Code 614.24(5)." (*Id.*) In fact, section 614.24(5) does *not* include "all limitations on use" because, though the section lists many examples of "use restrictions", it does *not* name "restraints on alienation" or its equivalent as one of them. *See* § 614.24(5). By failing to list any mention of restraints on alienation in the definition, the legislature intentionally decided not to include that restriction in the applicable doctrines covered by Iowa Code section 614.24(5). Such a reading applies a well-established rule of statutory construction:

> We will not consider what the legislature "should or might have said" when it constructed a statute. Iowa R. App. P. 6.904(3)(m); *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). In determining legislative intent, we may also look to the maxim "expressio unius est exclusio alterius," meaning expression of one thing is the exclusion of another. *Marcus*, 538 N.W.2d at 289. It is an established rule of statutory construction that "legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned." *Id.*

Homan v. Branstad, 887 N.W.2d 153, 166 (Iowa 2016).

Section 614.24 did not originally define "use restrictions". In 2014, the Iowa legislature amended it by adding a new subsection that expressly defined "use restrictions" as follows:

> As used in this section, "use restrictions" means a limitation or prohibition on the rights of a landowner to make use of the landowner's real estate, including but not limited to limitations or prohibitions on commercial uses, rental use, parking and storage of recreational vehicles and their attachments, ownership of pets, outdoor domestic uses, construction and use of accessory structures, building dimensions and colors, building construction materials, and landscaping.

Iowa Code § 614.24(5) (2019); *see* 2014 Iowa Acts ch. 1067 (S.F. 2315).[3] From this language, a restriction on alienation is not a "use restriction". *See id.* The restraint on alienation does not limit the use of the property in any way, instead it limits the ability to sell the property. Because a restriction on alienation is *not* a

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[3] The subsection lists three exceptions to the definition that do not apply to this case. *See* § 614.24(5)(a)-(c).

"use" restriction, Iowa Code Section 614.24 does not apply. *See Sisters*, 274 N.W. at 92. The executors' argument has no merit.

(3) Because a restriction on alienation is not a "use" restriction, whether that restriction is "reasonable" is irrelevant and does not apply to this case.

In their appeal, the executors argue the "current and better reasoned view" would do "away with blanket prohibitions against restraints on the alienation". (Appellant's Br. p19.) In other words, they want this court to overrule 140 years of precedent. The authority they cite for such an audacious proposition is the Iowa Supreme Court's recent decision in *Matter of Coe College*, 935 N.W.2d 581, 586 (Iowa 2019). (Appellant's Br. p22.) *Coe College* does not apply here because that case only concerned the interpretation of the exception to the rule against restrictions on alienation – the rule does not apply to gifts to charity or charitable uses. *Id.* at 586-87. Vera's will has nothing to do with charity. (*See* Ap. at 12-14.) *Coe College* reaffirmed general rule against restrictions on alienation. 935 N.W.2d at 586-87 (citing *Sisters of Mercy of Cedar Rapids v. Lightner*, 223 Iowa 1049, 1060–61, 274 N.W. 86, 92–93 (1937).)

The executors downplay Vera's restriction on alienation calling the twenty-year ban on selling or transferring the farm a "short limitation". (Appellant's Br. p23.) But, as the Iowa Supreme Court ruled in 1880, "a restriction which would suspend all power of alienation for a *single day*, is inconsistent with the estate granted, unreasonable, and void." *McCleary*, 6 N.W.

573 (emphasis added). Vera's intent to restrict the Coronellis' ability to sell or transfer the farm outside of their family for twenty years violates the rule against restrictions on alienation. *See id.* The executors have proffered no reasonable argument that the district court or Iowa's appellate courts should overturn that well-established precedent. This court should affirm.

3. The Coronellis take no position on the executors' third alleged error regarding the legal description of Vera's residence.

Conclusion

Based on the foregoing, the appellate court should:

1. Affirm the district court's decision in its entirety; and
2. order the Appellants to pay the court costs in this matter.

Request for Oral Argument

Counsel for Appellees respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

/s/ Andrew B. Howie

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Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 13th day of March 2020, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie
Andrew B. Howie

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