IN THE SUPREME COURT OF IOWA

SUPREME COURT No. 21-0556

RINGGOLD COUNTY Case No. EQCV506712

DAN R. SICKELS,

Respondent/Appellant,

vs.

RICHARD GROUT as Trustee of the
HELEN SCHARDEIN 2018 REVOCABLE TRUST,

Petitioner/Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR RINGGOLD COUNTY
THE HONORABLE MICHAEL JACOBSEN, JUDGE

APPELLANT'S FINAL BRIEF

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In re Estate of Rogers, 473 N.W.2d 36, 40 (Iowa 1991).

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ROUTING STATEMENT

This case can be decided based on existing legal principles, therefore transfer to the Court of Appeals would be appropriate. IOWA R. APP. P. 6.1101(3).

STATEMENT OF THE CASE

A. Course of the Proceedings & Disposition of the Case

On June 10, 2020, Richard Grout as Trustee of the Helen Schardein 2018 Revocable Trust (the "Trust") filed a Petition for Partition of the property located at Sun Valley Lake (the "Property"), locally known as 3198 Overland Trail, Ellston, Iowa, and legally described as:

> Lots Five Hundred Seventy-eight (578) and Five Hundred Seventy-nine (579) in Trails End Subdivision, a Subdivision of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section Twenty-two (22), Township Seventy (70) North, Range Twenty-eight (28) West of the 5th P.M., Ringgold County, Iowa according to the plat thereof recorded on March 12, 1973 in Book 1 at Page 427 ALSO DESCRIBED AS Parcel E of Trails End Subdivision as shown in the Plat of Survey recorded on April 9, 2003 in Book 4 at Page 186 in the office of the Ringgold County Recorder.

A Warranty Deed (the "2014 Deed") conveyed ownership of the Property to Helen Schardein ("Helen") and Dan R. Sickels ("Dan") as joint tenants with fully rights of survivorship on May 6, 2014 and a second Warranty Deed recorded on November 17, 2018 (the "2018 Deed") "transferred ownership" from Helen to the Helen Schardein 2018 Revocable Trust. It was further alleged that "co-ownership of the parties is no longer in the best interests of the parties," that "the property should be partitioned by sale," and that "all of the net proceeds of the sale of this real estate should be allocated to her revocable trust." (App. 4-5).

On July 15, 2020, Dan appeared through undersigned counsel and filed his Answer and Affirmative Defenses, denying most of the allegations asserted by the opposition. Additionally, Dan stated in his Affirmative Defenses that the opposition failed to state a claim upon which relief could be granted because the Trust had no current interest in the property, its interest conveyed to it by Helen ended when she passed away, therefore Dan was the sole owner of the Property. (App. 6-7).

Since there was a buyer lined up to purchase the property, both sides entered a joint stipulation and application to approve sale of the property on September 4, 2020. It was further agreed that the proceeds of the sale be held in escrow until resolution of the pending issues in the case. This joint application was approved on the same day by the trial court. (App. 8-24).

On December 3, 2020, Dan filed a Motion for Summary Judgment. (App. 25-41). Hearing on this Motion was set for December 28, 2020. On December 18, 2020, the Trust resisted summary judgment and filed a Cross-Motion for Summary Judgment. (App. 42-43). Dan filed a resistance to the cross-motion and a Motion to Strike due to untimeliness on December 28, 2020. (App. 44-47). On February 4, 2021, The Honorable Judge Elisabeth Reynoldson denied both Motions for Summary Judgment due to the existence of disputed facts and untimeliness of the Trust's motion. (App. 48-52).

On March 4, 2021, trial was held before The Honorable Michael Jacobsen, who thereafter took the case under

advisement. On March 26, 2021, the court ruled that the joint tenancy was severed by the 2018 Deed, which resulted in a tenancy in common. (App. 82-88). It was further ordered that the proceeds of the sale be exclusively released to the Trust since Helen had paid for the Property originally, and that all costs be taxed to Dan. (App. 87).

B. Nature of the Case

This case hinges on whether a joint tenancy with full rights of survivorship can be severed in a subsequent deed to a revocable trust without explicitly manifesting any intent to sever the existing joint tenancy. Dan asserts that Helen did not manifest any intent to sever the joint tenancy, she therefore only transferred to her trust the interest she possessed at that time, being a one-half undivided life interest in the Property, preserving the joint tenancy until her death, and upon her death, Helen's interest in the property terminated, and Dan as the surviving joint tenant took full ownership of the property as a matter of law.

For background, Dan and Helen met later in life, and they eventually formed a close relationship where Dan assisted

Helen in her day-to-day activities such as driving her to appointments, fetching groceries, maintaining properties she owned, and going on vacation together. (App. 130).

During this time, Helen and Dan became joint tenants of the property located at Sun Valley Lake at Helen's express request and direction, with the 2014 Deed listing them as "Joint Tenants with Full Rights of Survivorship, and not as Tenants in Common." (App. 60). The purchase price was paid by Helen from her bank account in May of 2014. Helen expressed that she wanted Dan to be taken care of for taking care of her and helping maintain her properties as an unpaid handyman. (App. 131-133).

In October of 2018, Helen suffered a stroke. Shortly thereafter, Helen's nephew, Richard Grout ("Rich"), flew into Iowa from Oregon and transferred her to a rehabilitation facility, and later to a nursing home in Mount Ayr. Dan attempted to visit her, but after finding her frightened, alone, and wanting to leave assisted care, he was barred from the premises, never to see her again. (App. 142).

Less than a month after Helen's stroke, while suffering from health issues related to the stroke, including being unable to read or physically sign anything, Rich had Ruth A. Daggett, Douglas Daggett's mother, execute documents on Helen's behalf establishing the revocable Trust and a Power of Attorney listing Rich as her agent. (App. 118-119). The Trust originally named Iowa State Bank as Trustee, but was later amended to list Rich as sole Trustee after the bank resigned from this position. (App. 80).

On the same day that both the revocable Trust documents and the Power of Attorney were executed by Ruth Daggett for Helen, Rich himself executed the 2018 Deed on behalf of Helen which purported to transfer Helen's interest in the Property to the revocable Trust. The 2018 Deed did not list Dan as a joint tenant of the property, and for its instrumental intent, other than boilerplate warranty deed language, stated only that "[t]his deed is given for estate planning purposes..." (App. 61-62). All of these documents were notarized by Douglas D. Daggett.

Helen died in 2019, and Dan filed an Affidavit of Surviving Joint Tenant. (App. 55-56). He then listed the property for sale, finding a buyer for the price of $80,000.00. (App. 57-58).

ARGUMENT

A. Preservation of Error

Dan R. Sickels preserved the issues presented for review by timely appealing the trial court's rulings entered on April 23, 2021. IOWA R. APP. P. 6.101(1)(b) (2021).

B. Scope and Standard of Review

"Review in equity cases shall be de novo." IOWA R. APP. P. 6.907 (2021). "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them." IOWA R. APP. P. 6.904(3)(g) (2021). The court elaborated that "[i]n equity it is our duty in a de novo review to examine the whole record and adjudicate rights anew on those prepositions properly presented, provided issue has been raised and error, if any, preserved in the course of trial proceedings." *In re Cory's Estate*, 184 N.W.2d 693, 695 (Iowa 1971). While weight

will be given to the trial court's findings, "this court will not abdicate its function as triers de novo on appeal." *Baker v. Starkey*, 259 Iowa 480, 490; 144 N.W.2d 889, 895 (1966).

C. Argument

The trial court erred by determining that a joint tenant with full rights of survivorship can be divested of his entire interest simply because the other joint tenant transferred their interest to a revocable trust without explicitly manifesting any intent to sever the joint tenancy. The 2018 Deed was effectuated "for estate planning purposes only," to simply avoid having to open a probate estate for Helen, and merely transferred Helen's then current interest as a joint tenant without modifying or severing the joint tenancy. Upon Helen's death, Dan became the sole owner of the property and should now be recognized as such. (App. 61).

Rich as Trustee of the Trust argued incorrectly that the transfer of Helen's interest into the Trust automatically severed the joint tenancy between her and Dan, resulting in a tenancy in common. From this position, it was further argued that Dan should receive none of the proceeds of the sale of the

property due to lack of monetary consideration. Due to the revocable, ambulatory nature of the Trust and the opposition's failure to rebut the presumption of a valid, co-equal interest in the property, these arguments fail, and Dan should be deemed the outright owner due to his survivorship interest as a joint tenant. (App. 56).

I. HELEN SCHARDEIN AND DAN SICKELS MAINTAINED THEIR MUTUAL INTERESTS AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP.

When the Sun Valley Lake Property was purchased, intent was explicitly manifested to place ownership in both Dan and Helen as joint tenants with full rights of survivorship. (App. 60). "The estate of joint tenancy is an estate held by two or more persons jointly with equal rights to share in its enjoyment during their lives and having as its distinguishing feature the right of survivorship. . . . Thus, a joint tenant owns an undivided interest in the entire estate to which is attached the right of survivorship." *Estate of Bates v. Bates*, 492 N.W.2d 704, 706 (Iowa Ct. App. 1992). When determining whether a joint tenancy exists, "the intent of the parties

should prevail when possible." *In re Estate of Johnson*, 739 N.W.2d 493, 497 (Iowa 2007). The intent of the 2014 Deed was that both Helen and Dan would share in the property until one passed away, in which case, the survivor would take absolute ownership of the property. *See In re Estate of Kirk*, 591 N.W.2d 630, 634 (Iowa 1999).

A. The Transfer of Helen's Interest to a Revocable Trust Did Not Sever the Joint Tenancy with Dan.

As a preliminary matter, there is no indication from either Helen's conduct, the testimony at trial, or the 2018 Deed that there was ever a specific intent to sever the joint tenancy established in the 2014 Deed. (App. 61). "Under an intent-based test, it is fundamental that the underlying instrument must effectuate the intent to sever." *Estate of Johnson*, 739 N.W.2d at 500. "Thus, … intent unaccompanied by some action or instrument sufficient to corroborate and give effect to that intent will not create, sever, or terminate a joint tenancy." *Id.* at 499.

In the present case, there is no apparent or clear intent from the 2018 Deed or Helen's conduct about what result was

intended for the existing joint tenancy. Conversely, in *Estate of Bates v. Bates*, the parties entered into a stipulation concerning the distribution of property after their divorce. 492 N.W.2d 704, 705 (Iowa Ct. App. 1992). In *Bates*, the stipulation provided that the property was held in joint tenancy, that the property would be placed on the market, and that all proceeds of the sale would be divided equally after paying associated costs. See *Id.* Further, in that case, the court concluded that the joint stipulation to sell the property and divide the proceeds clearly manifested an intent to sever the joint tenancy. *Id.* at 707. The present case is distinct due to the absence of any contemplation of either the existence of a joint tenancy or of Dan's status as a co-equal joint tenant, despite the 2018 Deed's purported "good and lawful authority to sell and convey the real estate" in "fee simple." *See id.*

Consistent with this position, the intent-based approach adopted by the court in *Estate of Johnson* required that the intent of the instrument reflect the party's intent to sever the joint tenancy. *See id.* at 500-501. In the present case, the

2018 Deed stated, in addition to the Deed's use "for estate planning purposes," that:

> "Grantors hereby covenant with grantees, and successors in interest, that grantors hold the real estate in fee simple; that they have good and lawful authority to sell and convey the real estate; that the real estate is Free and Clear of all Liens and Encumbrances except as may be above stated; ..."

By the boilerplate language stating that the grantors "hold the real estate in fee simple;" and that they "have good and lawful authority to sell and convey the real estate;" it can be determined that the grantor did not contemplate the severance of a joint tenancy, or even the existence of a joint tenancy that would implicate concurrent ownership interests in the property. This misstatement of the status of the property's ownership interests could have been easily remedied by reviewing public records before recording the 2018 Deed, and its absence makes its effectiveness incomparable with the explicit intent of the valid, previously recorded 2014 Deed. (App. 61).

In this situation, as in *Estate of Johnson*, the 2018 Deed "relied upon to supply intent did not express an intent to sever

the joint tenancy." *See* 739 N.W.2d at 500-501. Simply stated, this Deed did not and cannot itself, with its boilerplate language, divest Dan of his one-half, undivided joint tenancy interest. The intent of the parties from the 2014 Deed clearly meant to establish a joint tenancy with full rights of survivorship, and not as tenants in common. The 2018 Deed failed to manifest a similar level of intent, as it purported to convey the property "in fee simple," with no mention of the existing joint tenancy or Dan's status as a joint tenant. The requirement of symmetry between purported intent and language of the instrument is not met here and the 2018 Deed did not sever the joint tenancy between Helen and Dan. *See id.* at 501.

B. The Interest Transferred to the Trust Was Helen's Interest as a Joint Tenant with Dan, This Interest Was Extinguished Upon Helen's Death, Resulting in Dan's Sole Ownership of the Property.

There are multiple concurrent interests possessed by a joint tenant. "A joint tenant's survivorship interest is also known as the accretive interest, and the tenant's undivided interest is also called the proportional interest." *In re Estate of*

Lamoureux, 412 N.W.2d 628, 631 (Iowa 1987). These two interests are further described as follows:

> The proportional interest is the joint tenant's interest which comes from the creation of the joint tenancy which necessarily occurs before the death of another joint tenant. The accretive interest, on the other hand, is the interest the survivor receives at the death of a joint tenant. Thus, where two joint tenants have an interest in property and one joint tenant dies, the surviving joint tenant has a one-half proportional interest and a one-half accretive interest. *In re Estate of Kirk*, 591 N.W.2d at 634-35.

Activation of the accretive interest occurs when "the death of one joint tenant would cause the entire property held in joint tenancy to pass to the survivor; it would not cause the decedent's share to pass as the decedent's property." *In re Estate of Thomann*, 649 N.W.2d 1, 6-7 (Iowa 2002). Thus, upon the death of all but one of the parties to a joint tenancy, the remaining joint tenant takes absolute ownership of the property automatically. *See id.*

As stated previously, the 2018 Deed did not manifest any clear intent to sever the established joint tenancy. Additionally, the 2018 Deed stated that it was created "for

estate planning purposes," which imputes not an intent to sever, but a memorialization of the ambulatory nature of the Trust. "Ambulatory" is defined as "movable; revocable; subject to change; capable of alteration," which is consistent with the revocable nature of the Trust. BLACK'S LAW DICTIONARY 74 (5th ed. 1979). Thus, the 2018 Deed already described as intentionally ineffective as to sever the existing joint tenancy, was ineffective to unilaterally convert Helen's interest as a joint tenant to that of a tenant in common.

C. Amount of Monetary Consideration is Irrelevant in Determining the Amount of Dan's Interest as a Joint Tenant with Full Rights of Survivorship.

"The right of a joint tenant is generally described as 'an undivided interest in the entire estate to which is attached the right of survivorship." *Estate of Thomann*, 649 N.W.2d 1, 6-7 (Iowa 2002) (citing *Brown v. Vonnahme*, 343 N.W.2d 445, 451 (Iowa 1984)). "There is a presumption that joint tenants hold the property in equal shares." *Anderson v. Iowa Dep't of Human Servs.*, 368 N.W.2d 104, 109 (Iowa 1985). However, this presumption is rebuttable. *See id.* In rebutting this

presumption, "[t]he rights of the individual joint tenants must be determined from their agreement." *Id.*

The Trust contends that Dan's interest in the property is nonexistent due to lack of consideration. (App. 5). However, it was asserted at trial by Helen Kimes, the real estate agent who brokered the 2014 transaction, that upon being pressed on the ownership question, Helen Schardein stated that she intended the joint tenancy to be a standard undivided one-half interest during their lifetimes, with the survivorship interest activating upon one of their deaths. (*See* App. 149-150).

In this testimony, Mrs. Kimes stated that, at the real estate closing, she asked Helen: "Now, Helen, you understand that it goes automatically to the other party if something happens to either of you?" To this, Helen replied, "Yes," confirming her intention of creating a co-equal joint tenancy between her and Dan and showing symmetry with the intent and terms of the 2014 Deed. See *id.* Dan provided much to Helen as a companion in their years together, and the presumption of their possession of equal shares was not rebutted by any evidence presented. (App. 130-131).

In summary, the 2014 Deed created a valid joint tenancy with a rebuttable presumption of co-equal interests shared by Dan and Helen. Since the 2018 Deed was ineffective as to manifesting intent to sever the joint tenancy or otherwise convert Helen's interest from that of a joint tenant, Dan's status as the sole owner of the property is maintained due to the activation of his accretive interest upon Helen's death. *See Estate of Kirk*, 591 N.W.2d at 634-35. Thus, the Trust's contention that Dan has anything less than an absolute, undivided interest in the property after Helen's passing has no basis, and fails as a matter of logic.

II. EVEN IF THE CONVEYANCE SEVERED THE JOINT TENANCY, DAN SICKELS RETAINED ONE-HALF OF THE PROPERTY AS A TENANT IN COMMON

In a partition action, proceeds from the sale of property are to be divided according to the interest each party held in the property prior to the sale. *Coyle v. Kujaczynski*, 759 N.W.2d 637, 642 (Iowa Ct. App. 2008). "In a tenancy in common, each tenant has a separate, distinct and undivided

interest in all of the property so held." *In re Estate of Rogers*, 473 N.W.2d 36, 40 (Iowa 1991).

As an alternative argument, if the 2018 Deed is deemed to have severed the joint tenancy by its mere existence, absence any evidence of intent to sever the joint tenancy, and its mention of only one interested party as the holder of the property "in fee simple," then the property being held in co-equal shares by Dan and the Trust as tenants in common should not change Helen's intent to provide some benefit in the property to Dan.

The trial court correctly stated that "parties may be entitled to reimbursement for things such as value-enhancing improvements or indebtedness," but an accounting of such costs was not provided, nor were such costs allocated to each party's share. *See Mahon v. Mahon*, 121 N.W.2d 103, 106 (Iowa 1963). In this case, the court simply determined that such costs far outweighed any interest that Dan possessed, regardless of Helen's intent when creating the original joint tenancy or any consideration she received that was not monetary in nature. (App. 130-131). Such a result would

improperly and unilaterally divest him of his interest merely out of a vague instrument and the assertions of one absent from the creation of the original joint tenancy. In the event that this court rules consistently with the district court on the question of tenancy in common, Dan's interest should be that of at least a fifty-percent owner.

CONCLUSION

The facts of this case should have resulted in a different outcome than what was ordered by the trial court. Testimony at trial confirmed the clear intent of Helen to create a joint tenancy with survivorship rights with Dan when the property was purchased in 2014. However, the existence of this joint tenancy was neither mentioned nor contemplated in the 2018 Deed, and no evidence other than the deed itself was presented to show an intent to sever the joint tenancy. Therefore, the joint tenancy should stand, and Dan should be found to be the sole owner of the Property after Helen's passing.

Alternatively, if Dan is not found to be current sole owner as the sole survivor of the joint tenancy, he should have the

right to at least fifty-percent of the proceeds of the sale of the Property.

REQUEST FOR ORAL ARGUMENT

Appellant Dan R. Sickels requests the opportunity to present an oral argument in support of this appeal.

Respectfully Submitted,

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CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the final brief of Respondent-Appellant was filed via EDMS on the 7th day of October, 2021.

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CERTIFICATE OF SERVICE

It is hereby certified that on the 7th day of October, 2021, the undersigned party did file via EDMS the within final brief of Respondent-Appellant, which gives notice thereof to counsel for the other party at the following:

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COST CERTIFICATE

I hereby certify that the true and actual cost of printing the foregoing final brief of Respondent-Appellant was $0.00.

/s/ David J. Hellstern

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) because this brief contains 3,964 words, excluding the parties of the brief exempted by Iowa R. App. Pr. 6.903(1)(g)(l).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) and the type-style requirements of the Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Bookman Old Style.

/s/ David J. Hellstern — Signature
10/7/2021 — Date