IN THE SUPREME COURT OF IOWA

NO. 21-0556

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

Plaintiff-Appellee,

vs.

DAN R. SICKELS,

Defendant-Appellant.

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals decision of March 2, 2022)

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QUESTIONS PRESENTED FOR REVIEW

I. **DID THE COURT OF APPEALS ERR WHEN IT AFFIRMED THE DISTRICT COURT'S RULING THAT THE FILING OF A WARRANTY DEED SEVERED THE JOINT TENANCY WITH PLAINTIFF?**

II. **DID THE COURT OF APPEALS ERR WHEN IT FAILED TO REVERSE THE DISTRICT COURT'S GRANT OF PARTITION OF REAL PROPERTY AND AWARD THE ENTIRETY OF NET PROCEEDS TO THE PLAINTIFF?**

STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW Defendant-Appellant Dan R. Sickels, pursuant to Rule of Appellate Procedure 6.1103, and hereby seeks further review of the Court of Appeals' decision in *Richard Grout as Trustee of the Helen Schardein 2018 Revocable Trust,* No. 21-0556 (March 2, 2022).

This application presents the Court with the opportunity to cure deficiencies in our common law regarding the requisite standard of how a joint tenancy is severed.

Therefore, for the following reasons, Defendant requests further review:

1. The Court of Appeals' decision to affirm the trial court's ruling that the joint tenancy was severed was error in two respects:

a. Pursuant to Iowa R. App. P. 6.1103(1)(b)(1), it is in conflict with decisions of this Court, namely *In re Estate of Johnson*, 739 N.W.2d 493 (Iowa 2007).

b. Pursuant to Iowa R. App. P. 6.1103(1)(b)(2), it decides an important question of law that has not been, but should be, settled by the Supreme Court, namely:

- Does a deed executed by one party of a joint tenancy automatically sever the joint tenancy without stating the intent to do so?

BRIEF

Course of Proceedings and Disposition Below

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). A timely appeal was had, and the Court of Appeals affirmed the trial court's decision on March 2, 2022.

Introduction

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), at which point Mr. Grout initiated this action against him.

Argument

I. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE DISTRICT COURT'S RULING THAT THE FILING OF A WARRANTY DEED SEVERED THE JOINT TENANCY WITH PLAINTIFF

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).

Preservation of Error: Defendant 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).

Discussion:

The Court of Appeals and the trial court erred by not following the clear language of *In re Estate Johnson, 739 N.W.2d 493 (Iowa 2007).* Under the intent-based test adopted in *Johnson*, there logically needs to be intent by one party to sever the joint tenancy and a valid instrument to carry it out. *See id at 499.* Here, there is a valid instrument, but there was no intent to sever the joint tenancy. *See id.*

Both courts gave too much weight to the fact that all of Helen's properties, including her undivided half interest in the Sun Valley property, were transferred into her revocable trust by Mr. Grout after Helen's stroke, and that the Sun Valley property did not need to be transferred into her revocable trust. (Ruling p. 9). As stated on the face of the 2018 Warranty Deed, it was for "estate planning purposes", but nowhere on the document did it state an intention to sever the joint tenancy with Dan. (App. 61).

Helen's properties were transferred to a newly formed revocable trust after her stroke by her nephew, Mr. Grout, for the simple purpose to avoid probate, so that all properties would

pass through the trust upon her passing and an estate would not need to be opened. It could have also been contemplating Dan passing away before Helen, in which case transferring her interest in the Sun Valley property would then cause the entire property to go to her revocable trust upon Dan's passing, and like the rest of her properties, would not have gone through probate. If Dan passed away before Helen, the roles here would likely be reversed, with the Plaintiff arguing that the 2018 Warranty Deed did not sever the joint tenancy.

The filing of the 2018 Warranty Deed which transferred this Sun Valley property and another of Helen's properties into her revocable trust did not show an intent to sever the joint tenancy, it showed an intent to avoid probate, it only transferred the rights Helen presently had in the real property to her revocable trust, and therefore it did not sever the joint tenancy with Dan.

II. THE COURT OF APPEALS ERRED WHEN IT FAILED TO REVERSE THE DISTRICT COURT'S GRANT OF PARTITION OF REAL PROPERTY AND AWARD THE ENTIRETY OF NET PROCEEDS TO THE PLAINTIFF

If this Court determines that the joint tenancy was severed, Dan requests that he be given at least a one-half interest in the Sun Valley property. The Court of Appeals and the trial court failed to give any credit to Dan for his companionship and things he did for Helen throughout the years, which Helen obviously took into account when she deeded the property as joint tenants in 2014. *See Williams v. Mozingo*, 16 N.W.2d 619, 620 (Iowa 1944). 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). Here, if the Court determines that the joint tenancy was severed, it should still award Dan at least one-half of the property.

Conclusion

There was never shown an intent to sever the joint tenancy between Helen and Dan, only a clear intent to avoid probate, and nothing presented showed that Helen would have ever wanted to terminate the joint tenancy with Dan. Dan respectfully requests that the trial court and Court of Appeals

decisions be overturned, and that Dan be determined to be the sole owner of the property as the surviving joint tenant.

Respectfully Submitted,

/s/ *David J. Hellstern*
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CERTIFICATE OF COMPLIANCE

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because this application has been prepared in a proportionally spaced typeface using Bookman Old Style in 14-point font, and contains **2363** words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

March 22, 2022 */s/ David J. Hellstern*

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of this brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 22nd day of March, 2022.

___/s/David J. Hellstern_____

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