IN THE SUPREME COURT OF IOWA
NO. 21-0455

U.S. BANK NATIONAL ASSOCIATION,
Plaintiff-Appellee,

vs.

JEFFREY S. BITTNER, as trustee of the Joan Y. Bittner Marital Trust and individually,
Defendant-Appellant,

and

JOAN Y. BITTNER; MIDWESTONE BANK, as conservator of JOAN Y. BITTNER, conservatee; KIMBERLY MONTGOMERY; TODD RICHARD BITTNER; LYNN VON SCHNEIDAU,
Defendants-Appellees.

Appeal from the Iowa District Court for Scott County
The Honorable Tom Reidel, No. CVCV300445

PLAINTIFF-APPELLEE U.S. BANK'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW OF THE IOWA COURT OF APPEALS DECISION FILED ON JUNE 15, 2022

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STATEMENT RESISTING FURTHER REVIEW

The Court of Appeals affirmed the District Court's plain reading of an IRA beneficiary designation form signed by attorney R. Richard Bittner that listed "Joan Y. Bittner," "Relationship: Wife," as the "100%" share primary beneficiary on his IRA Beneficiary Designation. *See* June 15, 2022 Op.; *see also* App. 89-92. Joan's Conservator, MidWestOne Bank, and three of her four children listed as successor beneficiaries agreed. Joan's fourth child, Defendant-Appellant Jeffrey Bittner, disagreed. He contended that IRA assets should be redirected into the R. Richard Bittner Family Trust, over which he exercises control as a fiduciary. The R. Richard Bittner Family Trust is not named on the IRA beneficiary designation form. Plaintiff-Appellee U.S. Bank had a contractual obligation to transfer IRA assets to the correct beneficiary as sole trustee of the IRA, so it sought the District Court's legal conclusion as to the effect of the IRA beneficiary designation.

None of the Iowa R. App. P. 6.1103 factors support further review. The Court of Appeals and the District Court applied routine principles of contractual interpretation to "determine Richard's intent from the clear words of the agreement and beneficiary addendum and thus within the four corners of the contract," as opposed to ruling on any issue of broad public importance. *See* June 15, 2022 Op. at 12. This case merely presents an application of the

well-established principle that the written instrument provides dispositive insight into Richard's thinking and embodied his contractual intent. *See DuTrac Cmty. Credit Union v. Radiology Grp. Real Estate, L.C.*, 891 N.W.2d 210, 216 (Iowa 2017) ("If the intent of the parties is clear and unambiguous from the words of the contract itself, we will enforce the contract as written."); *see also* App. 423-424, Trial Tr. 31:12-32:25.

Contents of the IRA Beneficiary Designation.

The operative IRA Beneficiary Designation form is dated January 11, 2010. App. 89-92; App. 425, Trial Tr. 33:11-15.[1] The IRA Beneficiary Designation provides three fields for "Primary Beneficiary(ies)" (Part A), and three fields for "Contingent Beneficiary(ies)" (Part B), and a check box to permit beneficiaries to be specified on an attached addendum "[i]f the space provided below is not adequate" for the beneficiary designations of Richard's wife and their four children. App. 89. Richard has four children and wanted to list them all as contingent beneficiaries, but Part B of the IRA Beneficiary Designation form provided space for only three names. *See* App. 89; *see also* App. 91-92 (listing four children). Richard checked the box stating that he

[1] Richard signed an updated IRA Trust Agreement in 2017 following a periodic update to the agreement due to IRS regulation changes. App. 422-423, Trial Tr. 30:21-31:11. At that time, he left his 2010 IRA Beneficiary Designation the same. *Id.*

would attach an addendum. App. 89. He left both Part A and Part B of the form itself blank, and his Addendum included both Part A, Primary Beneficiary(ies), and Part B, Contingent Beneficiary(ies). App. 89, 91-92. Both Parts of the Addendum included all of the information required by the various fields on the form itself (name, citizenship, relationship, SSN, DOB, share, and address). *Id.*

The IRA Beneficiary Designation states that Part B is to be completed if a trust or estate is not designated as primary beneficiary ("Contingent Beneficiaries should be considered unless the primary beneficiary is a trust/estate or the 'Per Stirpes' box was selected for all primary beneficiaries"). App. 89, 91-92. In other words, Richard's inclusion of Part B on the Addendum would be unnecessary if a Trust were designated as Primary Beneficiary. *See* App. 89, 91-92. The IRA Beneficiary Designation defines "Contingent Beneficiary(ies)" as individuals who "shall be my beneficiary(ies) **only if <u>none</u>** of the Primary Beneficiaries are living at the date of my death." App. 89 (emphasis in original).

The IRA Beneficiary Designation form also includes a Part C, "Successor Beneficiary(ies)" who would take in the event Richard's Primary Beneficiary survived him but died before the IRA was depleted, or in the event his Primary Beneficiary predeceased him but he was survived by one or more

Contingent Beneficiaries who then died before the IRA was depleted. App. 90. The form states that Part C is "not applicable if Trust or Estate is beneficiary[.]" *Id.* (emphasis omitted). Richard filled out this Part of the form, which would be unnecessary if his primary beneficiary were a Trust or his Estate. *See id.* He checked the box indicating that in that event, the IRA should pass to "[T]he then living descendants, per stirpes, of the deceased beneficiary." *Id*.

On his Addendum, Richard completed all of the fields that were required on the IRA Beneficiary Designation form itself for Primary Beneficiary, identifying Richard's wife as the sole primary beneficiary:

> A. Primary Beneficiary:
>
> | | |
> |---|---|
> | Name: | Joan Y. Bittner |
> | U.S. Citizen: | Yes |
> | Relationship: | Wife |
> | SSN: | [Redacted] |
> | DOB: | [Redacted] |
> | Share: | 100% |
> | Address: | . . . |

App. 91.

Below that information, which was required for "Primary Beneficiary(ies)" in Part A of the form and was sufficient to designate Joan Y. Bittner as 100% Primary Beneficiary, Richard provided additional text:

> My wife, Joan Y. Bittner, is and shall be a primary beneficiary under my IRA Account No. [. . .] which is currently administered

> by U.S. Bank, N.A. Joan Y Bittner is the primary beneficiary under the Joan Y. Bittner Marital Trust under my Last Will & Testament dated January 11, 2010 and she shall be entitled to all annual distributions from my IRA based upon her life expectancy under the then applicable federal income tax rules and regulations.
>
> The value of such IRA, to the extent necessary to achieve the marital deduction which shall result, shall be included in the Joan Y. Bittner Marital Trust.
>
> That part of my IRA which is necessary to achieve the minimum marital deduction which will result in no federal income tax is devised to the Joan Y. Bittner Marital Trust with respect to which Joan Y. Bittner is beneficiary."

App. 91 (emphasis in original).

The IRA Beneficiary Designation Addendum also includes "Part B. Contingent Beneficiaries," which identifies each of Richard and Joan's four children as Contingent Beneficiaries (i.e., Defendants Jeffrey, Kimberly Montgomery, Todd Bittner, and Lynn Von Schneidau), and provides all of the same required information for each (name, citizenship, relationship, SSN, DOB, share, and address). App. 91-92.

The IRA Trust Agreement specifies that all interests must be transferred to the named beneficiary upon Richard's death. *See* App. 95-96, 99, Art. IV(3) and Art. VIII(8).

All Parties Agree that the Marital Trust will not be Funded.

Richard died on February 23, 2019 without a taxable Estate. App. 430, 467, Trial Tr. 39:20-22, 332:24. A marital trust would not achieve any tax advantage, U.S. Bank came to understand that no portion of the IRA assets would be placed in the Joan Y. Bittner Marital Trust (the "Marital Trust"), and Joan herself was the 100 percent primary beneficiary as Richard's wife.[2] App. 429-430, Trial Tr. 38:21-39:2, 8-14, 20-22. Jeffrey concedes that the Marital Trust will not be funded.[3] App. 479, Trial Tr. 382:16-20.

The District Court and the Court of Appeals Held that the IRA Beneficiary Designation was Unambiguous.

The District Court entered judgment finding that Joan was the primary beneficiary:

> The IRA beneficiary designation form clearly designates Joan Y. Bittner, Richard's wife, as the primary beneficiary. Furthermore, Richard elected to name successor and contingent beneficiaries, although the IRA beneficiary designation form clearly stated this would not be necessary if a trust or estate were beneficiaries. The language is clear that the Joan Y. Bittner Marital Trust would

[2] Defendant-Appellant's observation that a U.S. Bank Trust Officer initially believed that the Marital Trust was an IRA beneficiary remains confounding. Not only is the legal effect of an unambiguous agreement a conclusion of law that U.S. Bank submitted to the Court, the U.S. Bank Trust Officer plainly understood that Joan would be the beneficiary if the Marital Trust were not funded, U.S. Bank confirmed that Richard's Estate was below the federal estate tax threshold in the period after the Trust Officer's statements, and the Marital Trust was not funded. *See* App. 442-443, Trial Tr. 116:16-117:20.

[3] Defendant-Appellant's concession that the Marital Trust would not be funded belies any suggestion of any conflict arising from the Marital Trust.

> only come into effect if the same was required to eliminate or reduce federal estate tax. This contingency did not occur and, accordingly, any reference to the Joan Y. Bittner Marital Trust is no longer relevant. Furthermore, the interpretation that Joan Y. Bittner is the correct 100 percent beneficiary is consistent with federal law only allowing an individual IRA beneficiary to receive all annual distributions. This is consistent with the language utilized by Richard. Richard's Will itself specifically contemplates that the IRA would not become a part of the Richard Bittner Family Trust as it specifically states, "with exception of the IRA corpus and/or income." For these reasons, the Court finds that the IRA beneficiary designation is clear and unambiguous and that the 100 percent primary beneficiary is Joan Y. Bittner.

App. 84-85.

The Court of Appeals affirmed the District Court's judgment, rejecting Jeffrey's position[4] that the Richard Bittner Family Trust should receive the IRA assets. The Court of Appeals acknowledged that "the family trust was not named in the beneficiary designation at all." June 15, 2022 Op. at 9. "All parties agree that the estate never reached the threshold for federal income tax, so the marital trust received nothing from the IRA." *Id.* As with the District Court's judgment, the Court of Appeals' Opinion acknowledges that Joan was listed as the "100%" primary beneficiary, observes that Richard designated his children as contingent beneficiaries despite the form stating this was

[4] *See* Final Brief of Defendant-Appellant at 37 ("Jeff prays that this Supreme Court reverse and declare as a matter of law that the Richard Bittner Family Trust under the Last Will and Testament of the decedent is the lawful owner of the Richard Bittner IRA.")

unnecessary if the primary beneficiary is a trust or estate, and described the effect of the Addendum—if, and only if, tax advantages accrued to Joan's benefit by receiving the IRA payments indirectly through the Marital Trust, then, and only then, would some portion of the assets pass to the Marital Trust. Jeffrey's separate analysis in his briefing concerning tax effects under the Internal Revenue Code of other beneficiary plans cannot override what is in fact written on the IRA Beneficiary Designation form itself. The signed form provides dispositive insight into Richard's thinking with respect to tax consequences and embodied his intent.

Further, the District Court and Appellate Court applied ordinary definitions of the terms "primary beneficiary" and "contingent beneficiary" rather than the idiosyncratic definitions Jeffrey advances to advocate for transfer of IRA assets to the Family Trust that was not named in the beneficiary designation at all. Words in a contract are given their "ordinary meaning" unless they are defined. *See Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 684 n.5 (Iowa 2008) (citation omitted). Joan is "100%" share primary beneficiary in her relationship as "wife" and living, so she has primary beneficial interest in the IRA assets. The IRA Beneficiary Designation directed IRA assets to be disbursed "to the beneficiary(ies)" in the IRA Beneficiary Designation. *See* App. 89. Section "A. Primary

Beneficiary(ies)" has no condition to receipt of any disbursement. *See id.* By contrast, disbursements via Section "B. Contingent Beneficiary(ies)" or Section "C. Successor Beneficiary(ies)" are both conditioned upon the death of the primary beneficiary, before or after Richard's death. *See* App. 89-90; *see also, e.g. id.* ("Contingent Beneficiary(ies)" are individuals who "shall be my beneficiary(ies) **only if <u>none</u>** of the Primary Beneficiaries are living at the date of my death.") (emphasis in original). As the Court of Appeals acknowledged, the Marital Trust could have been viewed as "a primary beneficiary based on the contingency that the estate would be subject to estate tax, which would have resulted in Joan being 'a' primary beneficiary and the marital estate being 'a' primary beneficiary. But that contingency never occurred, making Joan the sole primary beneficiary." June 15, 2022 Op. at 10 n. 3

Joan's designation as the 100% beneficiary "gives a reasonable, lawful, and effective meaning to all terms [and] is prefer[able] to" any contrary "interpretation which leaves a part unreasonable, unlawful, or of no effect." *See Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991). The Court of Appeals did not err applying routine contract principles, so further review should be denied.

Parol Evidence was Properly Excluded because the IRA Beneficiary Designation is a Fully Integrated Embodiment of Richard's Intent.

The Court of Appeals agreed with the District Court's exclusion of extrinsic evidence under the parol evidence rule, which bars such evidence if a written agreement is fully integrated or if the evidence is offered to alter, rather than interpret, a written agreement. "When an agreement is deemed fully integrated, the parol evidence rule prevents the receipt of any extrinsic evidence to contradict (or even supplement) the terms of the written agreement." *Whalen v. Connelly*, 545 N.W.2d 284, 290 (Iowa 1996); *see also* Iowa R. Evid. 5.402 (irrelevant evidence is inadmissible).

Richard agreed in writing that his last IRA Beneficiary Designation "shall revoke all previous designations," Appendix ("App.") 99, Art. VIII(8), and the extrinsic evidence was offered to delete Joan's "100%" designation in her relationship as Richard's "[w]life" and replace her with a Trust that is not named in the IRA Beneficiary Designation, App. 91. Regardless of what Richard may have chosen in the past, or what witnesses believe he may have wanted at trial on January 26 and 27, 2021, he agreed that the IRA Beneficiary Designation (App. 89-92) should be exclusively relied upon to preserve his intent concerning IRA assets upon his death. *See id.* Other extrinsic evidence of Richard's intent was correctly ruled inadmissible. *See Whalen*, 545 N.W.2d at 290.

Even if the circumstances were different, and a second reasonable interpretation of the IRA Beneficiary Designation existed such that the IRA Beneficiary Designation could not be enforced as written (not so), Defendant-Appellant's proposed exhibits and testimony remain inadmissible because they were offered for a prohibited purpose. Even when admissible, parol evidence may only be used to interpret language used and not to vary or alter the written agreement:

> It is our view, however, that the proffered testimony concerned only what the defendant wanted the agreement to say. The offer of extrinsic evidence was not an attempt to interpret the language actually used by the parties; it was an attempt to vary or alter language in the written agreement, and as such was inadmissible. Extrinsic evidence offered to show "what the parties meant to say" instead of "what was meant by what they said" is not admissible even under the broad holding of *Hamilton*.

Bankers Tr. Co. v. Woltz, 326 N.W.2d 274, 276 (Iowa 1982) (emphasis added) (citations omitted) (quoting *Associated Grocers of Iowa Co-op., Inc. v. West*, 297 N.W.2d 103, 109 (Iowa 1980)) (citing *Tamm, Inc. v. Pildis,* 249 N.W.2d 823, 832 (Iowa 1976); *Hamilton v. Wosepka,* 154 N.W.2d 164 (Iowa 1967)).

Jeffrey has maintained that the Richard Bittner Family Trust (which is not named anywhere in the IRA Beneficiary Designation) "is the lawful owner of the Richard Bittner IRA," Final Brief of Defendant-Appellant at 37, and he impermissibly sought to adduce evidence to support this conclusion before the District Court. As to the only trust named, the Marital Trust, Jeffrey concedes

that the tax advantage that served as a contingency for redirecting a portion of IRA assets into the Marital Trust did not exist and that the Marital Trust will not be funded. *See* App. 479, Trial Tr. 382:16-20. The proposed evidence was not offered to interpret the language Richard used; it was an attempt to delete Joan's "100%" designation in her relationship as Richard's "[w]ife" and replace her with a trust that is not named. *See Bankers Tr. Co.*, 326 N.W.2d at 276. Exclusion of this evidence should not serve as a basis for further review.[5]

Richard Selected U.S. Bank to Serve as Sole Trustee of the IRA, and U.S. Bank Fulfilled its Duties.

Defendant-Appellant's characterizations concerning U.S. Bank's participation in this litigation are refuted by the record and, ultimately, immaterial to the Court of Appeals' legal conclusion regarding contractual

[5] Even if Richard's Last Will & Testament dated January 11, 2010 ("2010 Will") had been considered despite the parol evidence rule, it is entirely consistent with the face of the IRA Beneficiary Designation listing Joan as Richard's wife as the 100% primary beneficiary, subject to a condition placing some portion of the assets into the Joan Y. Bittner Marital Trust if an estate tax advantage existed. Specifically, the 2010 Will only addresses IRA assets *received* by the Marital Trust according to the terms of the IRA Beneficiary Designation as opposed to mandating disbursement to the Marital Trust. *See* App. 145 (Article IX). The 2010 Will's provisions addressing IRA assets likewise pertain to IRA assets received, and it references the IRA Beneficiary Designation for disposition of those assets. App. 147 (Article XI(C) and Article XI(C)(5)). Significantly, the 2010 Will specifically excludes IRA assets from passing to the Richard Bittner Family Trust. App. 147, Article XI(D). In sum, the 2010 Will's terms are consistent with Joan's 100% share interest as primary beneficiary and is expressly at odds with Jeffrey's request to transfer IRA assets to the Richard Bittner Family Trust.

interpretation of the IRA Beneficiary Designation. Richard agreed to maintain his IRA with U.S. Bank. *See* App. 93-102. U.S. Bank was the sole, named Trustee of Richard's IRA Trust with control over the IRA assets and the obligation to transfer the IRA assets to the correct beneficiary. *See* App. 89 ("I, the Grantor, do hereby direct U.S. Bank N.A., as Trustee of the IRA Trust, to disburse, in the event of my death, all monies or other property held for my benefit in the IRA Trust to the beneficiary(ies) enumerated below."). U.S. Bank's Petition for Declaratory Judgment sought confirmation, in its role as sole Trustee of the IRA, that U.S. Bank read the 2010 IRA Beneficiary Designation and IRA Trust Agreement correctly so that it could direct the IRA assets to the correct individual without contractual liability to another. Due to U.S. Bank's obligations as IRA Trustee, U.S. Bank did not file an interpleader (i.e., as a disinterested entity holding funds) which would ignore its obligation to follow the clear instructions of the IRA Beneficiary Designation. Petitions for Declaratory Judgment are authorized to construe written instruments in these circumstances. *See* Iowa R. Civ. P. 1.1101, 1.1102. Based on the foregoing, U.S. Bank's was entitled to request the court's approval to invoke its contractual obligation to transfer IRA assets to Joan free from outlying claims.

The faulty presumption underlying Defendant-Appellant's mischaracterization of the record is the false contention that U.S. Bank somehow picked a side and shaped its interpretation to suit that individual's interests. On the contrary, U.S. Bank sought independent review from the District Court as to a conclusion of law regarding the correct interpretation of the IRA Beneficiary Designation to ensure that it gets it right before transferring any IRA assets. Certainly, U.S. Bank maintained what the District Court ultimately found—that the intent of the 2010 IRA Beneficiary Designation "is clear and unambiguous" and it should be "enforce[d] . . . as written." *See DuTrac*, 891 N.W.2d at 216. This is in recognition that U.S. Bank, as the sole Trustee of the IRA, cannot advance an interpretation at odds with the face of the IRA Beneficiary Designation.

Regardless, arguments surrounding a purported conflict with Jeffrey are immaterial as an affirmative defense or otherwise because the Court of Appeals and the District Court drew an independent legal conclusion concerning the unambiguous interpretation of the IRA Beneficiary Designation. *See* June 15, 2022 Op. at 6-12 (analyzing "Richard's intent from the clear words of the agreement and beneficiary addendum and thus within the four corners of the contract"). U.S. Bank must direct IRA assets somewhere, and Jeffrey cites no authority depriving the District Court of

jurisdiction to provide direction in that regard.

Jeffrey failed to preserve error regarding any alleged conflict because he failed to place the District Court on notice that these alleged defenses bore on U.S. Bank's request for declaratory judgment regarding who must receive Richard's IRA assets. *See, e.g. Chiavetta v. Iowa Bd. of Nursing*, 595 N.W.2d 799, 802 (Iowa 1999) (defense was "not presented to the district court and, accordingly, is not properly before us for review"); *see also* Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 46 (2006) ("Parties may not raise new theories after trial, even in equitable matters. This includes seeking new remedies and raising new defenses."). Jeffrey's December 16, 2020 Motion to Defer Trial on his Counterclaim for breach of fiduciary duty was granted. *See* December 17, 2020 Order. At trial, he did not present arguments concerning how any such affirmative defense could impede the District Court from ruling where U.S. Bank should direct the assets within Richard's IRA. The District Court did not rule upon any such defense in relation to U.S. Bank's request for declaratory relief regarding Richard's IRA assets. *See generally* App. 78-85, Ruling on Petition for Declaratory Judgment. Accordingly, the Court of Appeals properly declined to address this issue. *See* June 15, 2022 Op. at 12.

CONCLUSION

For the reasons stated herein, Plaintiff-Appellee U.S. Bank respectfully requests that the Court deny further review.

Dated: July 11, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2022, I electronically filed the foregoing document with the Clerk of Court using the EDMS system with a copy being sent via electronic notice to all parties and attorneys of record

/s/ Nicholas Petersen

CERTIFICATE OF COMPLIANCE WITH TYPE REQUIREMENTS

This brief complies with the limitation on the volume of type set forth in IOWA R. APP. P. 6.903(1)(g)(1) and 6.1103(4). It contains 3,639 words, excluding parts of the brief exempted by IOWA R. APP. P. 6.903(1)(g)(1).

This brief complies with the type-face requirements of IOWA R. APP. P. 6.903(1)(e) and the type-style requirements of IOWA R. APP. P. 6.903(1)(f). It has been prepared in a proportionally spaced typeface, using Microsoft Word 2013 in 14-point Times New Roman.

/s/ Nicholas Petersen