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 FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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DuTrac Cmty. Credit Union v. Radiology Grp. Real Estate, L.C., 891 N.W.2d 210 (Iowa 2017).

C & J Vantage Leasing Co. v. Wolfe, 795 N.W.2d 65 (Iowa 2011).

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RPC Liquidation v. Iowa Dep't of Transp., 717 N.W.2d 317 (Iowa 2006).

26 U.S.C. § 4974(a).

26 C.F.R. §§ 1.401(a)(9)-5 and 1.408-8 26.

Iowa Code § 637.421(3).

Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430 (Iowa 2008).

In re Det. of Palmer, 691 N.W.2d 413 (Iowa 2005).

Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859 (Iowa 1991).

II. Whether the District Court properly excluded 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—where Richard Bittner 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]ife" and replace her with a Trust that is not named in the IRA Beneficiary Designation, App. 91?

Whalen v. Connelly, 545 N.W.2d 284 (Iowa 1996).

Iowa R. Evid. 5.402.

Bankers Tr. Co. v. Woltz, 326 N.W.2d 274 (Iowa 1982).

Associated Grocers of Iowa Co-op., Inc. v. West, 297 N.W.2d 103 (Iowa 1980).

Tamm, Inc. v. Pildis, 249 N.W.2d 823 (Iowa 1976).

Hamilton v. Wosepka, 154 N.W.2d 164 (Iowa 1967).

III. Whether U.S. Bank, as sole Trustee of Richard Bittner's IRA Trust, was authorized to petition for declaratory judgment to obtain the District Court's legal conclusion whether to transfer Richard's IRA assets to his wife, Joan Bittner, or to his son, Defendant-Appellant Jeffrey Bittner, as trustee of the Richard Bittner Family Trust?

Chiavetta v. Iowa Bd. of Nursing, 595 N.W.2d 799 (Iowa 1999).

Iowa R. Civ. P. 1.1101.

Iowa R. Civ. P. 1.1102.

Kline v. SouthGate Prop. Mgmt., LLC, 895 N.W.2d 429 (Iowa 2017).

DuTrac Cmty. Credit Union v. Radiology Grp. Real Estate, L.C., 891 N.W.2d 210 (Iowa 2017).

Opperman v. M. & I. Dehy, Inc., 644 N.W.2d 1 (Iowa 2002).

27A Am.Jur.2d Equity § 126, at 605 (1996).

Myers v. Smith, 208 N.W.2d 919 (Iowa 1973).

Midwest Mgmt. Corp. v. Stephens, 353 N.W.2d 76 (Iowa 1984).

27A Am. Jur. 2d Equity § 26 (2021).

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because it involves application of well-established principles regarding a District Court's interpretation of a clear and unambiguous agreement and the exclusion of parol evidence. See Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

The central question in this case is whether a District Court's interpretation of an IRA beneficiary designation should be affirmed where it directed assets to the IRA owner's wife, who was named as the 100% share primary beneficiary, or whether the IRA assets should have been directed to a Family Trust controlled by the son of the IRA owner and his wife, which is not named whatsoever on the IRA beneficiary designation.

Richard Bittner ("Richard"), an attorney, agreed in writing to identify his IRA beneficiaries on a certain form that would revoke "all previous designations." App. 99, Art. VIII(8). This form states that Joan Bittner ("Joan"), in her relationship as Richard's "[w]ife" is the "100%" share beneficiary. App. 91.[1] No one disputes the identity and verbiage of the IRA Beneficiary Designation. Rather, Richard and Joan's son, Defendant-

[1] The IRA Beneficiary Designation was admitted as USB-1, App. 421, Trial Tr. 28:21-24, and subsequently admitted as JB-2, App. 441, Trial Tr. 83:2-14, which is identical in substance.

Appellant Jeffrey Bittner ("Jeffrey"), contends that the money should be directed into the Richard Bittner Family Trust ("Family Trust"). The Family Trust, however, does not appear in the IRA Beneficiary Designation. *See* App. 89-92.

Jeffrey is co-Trustee and beneficiary of the Family Trust, meaning his position on appeal would allow him to exercise control over the assets as a fiduciary. The District Court's ruling, if affirmed, would confirm that Joan should receive all of the assets directly and permit her and her conservator to exercise control (during her lifetime and with her Estate plan).

Plaintiff-Appellee U.S. Bank National Association ("U.S. Bank") filed this declaratory judgment action in its capacity as sole Trustee of Richard's IRA to confirm the plain reading of the IRA beneficiary designation in light of Jeffrey's idiosyncratic interpretation. The written instrument provides dispositive insight into Richard's thinking and embodied his 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. U.S. Bank respectfully requests that this Court affirm the District Court's judgment:

> 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 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.

STATEMENT OF FACTS

Contents of the IRA Beneficiary Designation

Richard Bittner ("Richard") was an attorney who maintained an Individual Retirement Account Trust Agreement with U.S. Bank. *See* App. 93-100. He agreed to identify his IRA beneficiaries on a certain form that would revoke "all previous designations." App. 99, Art. VIII(8). This creates clarity between any IRA owner and U.S. Bank as to who is currently designated as a beneficiary. App. 423-424, Trial Tr. 31:12-32:25. The

operative IRA Beneficiary Designation form is dated January 11, 2010. App. 89-92; App. 425, Trial Tr. 33:11-15. [2]

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 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 for both Sections (name, citizenship, relationship, SSN, DOB, share, and address). *Id.*

[2] 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.*

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"), and 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 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 to IRA Beneficiary Designation, Richard completed all of the fields that were required on the form itself for Primary Beneficiary, identifying Richard's wife as the sole primary beneficiary, as follows:

> 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).

Richard Bittner Died Without a Taxable Estate

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, and 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 that Joan herself was the 100 percent primary beneficiary as Richard's wife.[3]

[3] Defendant-Appellant's observation that a U.S. Bank Trust Officer initially believed that the Marital Trust was an IRA beneficiary is confounding. *See* Defendant-Appellant's Proof Brief at 16-18. Not only is the legal effect of an unambiguous agreement a conclusion of law that U.S. Bank submitted to the

App. 429-430, Trial Tr. 38:21-39:2, 8-14, 20-22. Jeffrey concedes that the Marital Trust will not be funded. App. 479, Trial Tr. 382:16-20. Instead, he maintains that another trust not named in the IRA Beneficiary Designation, the Family Trust, should somehow receive the IRA assets. *See* App. 479-480, Trial Tr. 382:21-383:2; Defendant-Appellant's Proof Brief at 37.

Pre-Trial Proceedings Before the District Court

In fidelity to Richard's written instructions on the IRA Beneficiary Designation, and based on its obligations as Trustee of the IRA,[4] U.S. Bank filed its Petition for Declaratory Judgment on July 29, 2020 due to Jeffrey's disagreement that his mother, Joan, was the primary beneficiary. App. 431-432, Trial Tr. 42:11-43:1. U.S. Bank named as defendants Joan, through her conservator MidWestOne Bank; each of Richard and Joan's children—Jeffrey, Kimberly, Todd, and Lynn—who are successor beneficiaries; and

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District Court below, 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 April 25, 2019, and the Marital Trust was not funded. *See* App. 442-443, Trial Tr. 116:16-117:20.

[4] Contrary to Jeffrey's contention that U.S. Bank was somehow at fault for not filing an interpleader, Richard maintained his IRA under an IRA Trust Agreement with U.S. Bank. U.S. Bank was bound to follow the written instructions of Richard's IRA Beneficiary Designation and could not take a position which ignored its obligation to follow the clear instructions of the IRA Beneficiary Designation.

Jeffrey again, in his role a designated trustee of the Joan Y. Bittner Marital Trust.

On December 2, 2020, the District Court denied Jeffrey's motion to intervene on behalf of the Estate of Richard Bittner. *See* App. 19-22. The District Court held that the Estate has no interest in the IRA funds and "[t]o the extent that it does have an interest in the proceedings, it is only as a result of the marital trust . . . ." App. 19-20. Further, the District Court held that Jeffrey was properly named as defendant in his role as trustee of the Marital Trust. App. 20. The District Court ordered the Declaratory Judgment Petition to be heard on January 26 and 27, 2021, dates previously scheduled for Jeffrey's motion to remove U.S. Bank as Co-Executor of Richard's Estate in Scott County District Court Case No. ESPR078709. *See id.*

Later on December 2, 2020, Jeffrey moved to appoint himself as trustee of the Family Trust. *See* App. 34. On December 10, 2020, U.S. Bank resisted because court appointment is unnecessary pursuant to Iowa Code § 633A.4101 and because the Family Trust is not named in the IRA Beneficiary Designation. On December 28, 2020, the District Court denied Jeffrey's request to intervene for the reasons set forth in its December 2, 2020 Order. App. 34.

On December 16, 2020, Jeffrey answered the Petition for Declaratory

Judgment. On the December 29, 2020 deadline to file its brief in support of declaratory judgment, U.S. Bank did so in the form of a motion for summary judgment. *See* App. 36-38; *see also* U.S. Bank's Brief in Support of its Motion for Summary Judgment, pp.1-18; U.S. Bank's Statement of Undisputed Facts in Support of its Motion for summary Judgment, pp. 1-3. On December 30, 2020, Jeffrey moved to strike the motion for summary judgment and subsequently resisted the motion. On January 13, 2021, the District Court denied the motion for summary judgment and granted the motion to strike as untimely, stating that it would consider U.S. Bank's briefing in reaching a decision on the merits at trial. *See* App. 46-47. On January 19, 2021, U.S. Bank submitted its Reply in Support of Declaratory Judgment, in accordance with the previously set briefing schedule. *See* U.S. Bank's Reply Brief in Support of Declaratory Judgment, pp. 1-18.

On January 5, 2021, U.S. Bank moved to have its request for Declaratory Judgment heard sequentially, not concurrently, with Jeffrey's motion to remove U.S. Bank as Executor of Richard's Estate. *See* App. 39-45. On January 14, 2021, the Court denied the motion for sequential trials, stating that "[t]he matter is being tried to the Court and it will not prejudice any party if evidence comes in out of order." *See* App. 48-52.

Except insofar as the issues before the Court in Scott County District

Court Case No. ESPR078709 and this declaratory judgment action were scheduled to be heard at the same time, *see id.*, the District Court has not otherwise consolidated these cases and/or their dockets. The record of each case is distinct, and docket entries and rulings from Scott County District Court Case No. ESPR078709 are not properly before this Court.[5] *See* App. 51 (stating that "[t]he Court will be able to sort through" evidence that comes in out of order at the consolidated hearing).

On January 19, 2021, Jeffrey submitted a Brief in Support of Admissibility of Richard Bittner's Wills and IRA Beneficiary Designations. On January 22, 2021, U.S. Bank resisted because (1) all extrinsic evidence was irrelevant to interpreting an unambiguous IRA Beneficiary Designation

[5] To the extent this Court examines issues in Scott County District Court Case No. ESPR078709—they are not before the Court on this appeal—Jeffrey's brief repeatedly conflates U.S. Bank's conflict with *him* regarding the clear designation of Joan's beneficiary status (which was among the reasons for Jeffrey's election to remove U.S. Bank as co-Executor of Richard's Estate) with a purported conflict of interest as between U.S. Bank in its role as sole Trustee of the IRA and its former role as co-Trustee of the Estate (no such conflict existed). No conflict exists because Richard appointed U.S. Bank in its dual roles knowing what that would mean and there is no incompatibility between U.S. Bank's individual interests and its duties. With respect to its role as IRA Trustee (or any of its roles), U.S. Bank could not advance an interpretation at odds with the face of the IRA Beneficiary Designation. In any event, the Estate had no interest in the IRA assets. *See* App. 19-22; *see also Matter of Estate of Gantner*, 893 N.W.2d 896, 900 (Iowa 2017) (citing Iowa Code § 633.357) (IRA assets "pass outside of the probate estate" where the Estate is not a named beneficiary).

under the parol evidence rule, and (2) even if that were not so, the exhibits were offered for a prohibited purpose—not to interpret language actually used but to alter language in the written agreement. *See* App. 53-54, ¶¶ 1-2.

Trial Ruling Excluding Extrinsic Evidence

The admissibility of extrinsic evidence came before the District Court for argument and decision at the outset of the two-day bench trial on January 26. *See* App. 401-421, Trial Tr. 8:18-28:5. The District Court ruled as follows:

> The Court had a chance to review the briefs in this matter before we came in today and started. The Court also had a chance to look at the exhibits. The Court agrees with U.S. Bank's position.
>
> I think that if the Joan Bittner Marital Trust was able to be funded or there was a need to fund it, that might create some ambiguity, but without that, I think that point is moot and the document, I think, then speak for itself after that. The motion to exclude extrinsic evidence is granted.

App. 420-421, Trial Tr. 27:21-28:5.

The Court proceeded to hear U.S. Bank's Petition for Declaratory Judgment and Jeffrey's request to remove U.S. Bank as co-Executor of the Estate on January 26 and 27, 2021. Throughout the remainder of the consolidated trial U.S. Bank objected to the admission of any extrinsic documentary evidence or testimony regarding Richard's subjective intent. *See* App. 444, Trial Tr. 155:8-19 (granting standing objection); *see also* App. 433-440, 445-450, 452-466, 468-471, 473-478, Trial Tr. 49:4-6; 53:21-23; 55:22-

25; 57:21-24; 59:1-3; 67:18-20; 71:21-24; 73:16-19; 160:1-6; 172:2-8, 23-25; 173:1-2, 22-25; 174:1-11; 183:2-5; 241:24-242:17; 252:2-25; 253:1-14; 254:5-15; 263:1-21; 266:1-7; 268:21-25; 270:2-6; 271:4-8; 272:23-25; 273:1-2, 16-20; 274:11-14; 275:15-19; 279:17-25; 280:3-10; 287:19-23; 337:1-10, 21-25; 338:1, 11-12; 342:14-22; 343:8-344:5; 345:6-12; 351:1-352:5; 364:19-25; 365:1-2; 367:6-7 (renewed objections to parol evidence).

Judgment

On March 17, 2021, the District Court issued its Ruling on Petition for Declaratory Judgment, which found that the IRA Beneficiary Form unambiguously designated Joan, not the Richard Bittner Family Trust:

> 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 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.

Further, the District Court alternatively found the evidence offered by Jeffrey unpersuasive:

> Jeffrey relies upon Richard's subjective desires and his firm belief that Richard did not wish for Joan to have a sizeable distribution directly to her. However, even if applicable, this does not overcome the clear language set forth in the IRA beneficiary designation. It is also somewhat contrary to the first line of Article IV of the Last Will and Testament which state, "While I have, during my lifetime, attempted to equalize the value of assets owned by me and those owned by my wife, I have not succeeded." That provision indicates a desire of Richard to equalize the assets between himself and his wife.

App. 84.

ARGUMENT

I. The District Court's Judgment Should Be Affirmed that the IRA Beneficiary Designation Clearly Names Joan as Richard's Wife

A. Preservation of Error and Standard of Review

Defendant-Appellant preserved his right to appeal, but his statement of the scope and standard of review requires elaboration due to the District Court's alternative finding. "Interpretation is reviewed as a legal issue unless it depended at the trial level on extrinsic evidence." *Colwell v. MCNA Ins. Co.*, 960 N.W.2d 675, 677 (Iowa 2021) (*Peak v. Adams*, 799 N.W.2d 535, 543 (Iowa 2011)) (quoting *Fashion Fabrics of Iowa, Inc. v. Retail Invs. Corp.*, 266 N.W.2d 22, 25 (Iowa 1978)). The District Court's ruling that IRA Beneficiary Designation clearly names Joan, as Richard's wife, is reviewed for errors at

law. *See id.* If this Court reaches the District Court's alternative finding (that Richard's subjective desire, "even if applicable," does not overcome the clear language of the IRA Beneficiary Designation), the review is de novo and the District Court's finding are given weight. *See* App. 84; *see also* Iowa R. App. P. 6.907 (cases tried in equity reviewed de novo); *Garland v. Branstad*, 648 N.W.2d 65, 69 (Iowa 2002).

B. The District Court's Interpretation of the IRA Beneficiary Designation Should Be Affirmed.

1. The IRA Beneficiary Designation is Clear—Joan Bittner is the 100% Share Primary Beneficiary.

Richard's intent to name his wife, and not the Richard Bittner Family Trust, as the primary beneficiary is clear on the face of the IRA Beneficiary Designation insofar as he lists "Joan Y. Bittner," "Relationship: Wife," as the "100%" share primary beneficiary of his IRA assets and then states: "My wife, Joan Y. Bittner, is and shall be a primary beneficiary under my IRA Account No. [redacted] which is currently administered by U.S. Bank, N.A." *See* App. 91. The Family Trust is not named whatsoever. *See id.* "If the intent of the parties is clear and unambiguous from the words of the contract itself, we will enforce the contract as written." *DuTrac*, 891 N.W.2d at 216.

The touchstone of contract interpretation is the "intent of the parties at the time they entered into the contract." *C & J Vantage Leasing Co. v. Wolfe*,

795 N.W.2d 65, 77 (Iowa 2011). The "most important evidence" of the parties' intent is the language used in the agreement. *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 687 (Iowa 2020). "Generally, when we interpret contracts, we look to the language contained within the four corners of the document." *DuTrac*, 891 N.W.2d at 216.

Where the terms of the contract are unambiguous, giving effect to all language of the contract simply means "enforc[ing] it as written." *Lange v. Lange*, 520 N.W.2d 113, 117 (Iowa 1994). Where the language of the contract is ambiguous, that is, where the text creates "genuine uncertainty" because it is "fairly susceptible to two interpretations," the court will peek behind the words of the agreement to decide which interpretation to enforce. *A.Y. McDonald Indus. v. INA*, 475 N.W.2d 607, 618–19 (Iowa 1991).

Richard's reference to his "wife," Joan, as the 100% primary beneficiary[6] leaves no room for an interpretation naming a legal entity, such

[6] Given Richard's legal and financial sophistication, it is unclear what significance Jeffrey attributes to his contention that the IRA Trust Agreement and IRA Beneficiary Designation do not define the term "primary beneficiary." Defendant-Appellant's Proof Brief at 32. 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 (first) beneficial interest in the IRA assets. Even if there were any doubt whether Richard would rely on a non-standard definition of "primary beneficiary" in an IRA designation, the IRA Beneficiary Designation is patently clear as to what is meant. Richard directed

as the Family Trust. There is no "genuine uncertainty" in the meaning of the words used. *A.Y. McDonald Indus.*, 475 N.W.2d at 618. Hence, there can be no question that the IRA Beneficiary Designation had the legal effect of designating "Joan Y. Bittner" as the "100%" beneficiary. *See RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 321 (Iowa 2006) ("when the contract is not ambiguous, [courts] will enforce it as written"). The District Court correctly concluded that the IRA assets must pass to Joan individually.

The District Court relied upon several different features of Richard's IRA Beneficiary Designation to confirm that it unambiguously designates Joan:

- Richard identified Joan as the 100% share primary beneficiary in her "[r]elationship" as his "[w]ife," a role she self-evidently could only occupy in a personal capacity. *See* App. 91.
- After setting forth the information relevant to Part A of the IRA Beneficiary Designation within the Addendum, Richard confirmed that

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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, whether before or after Richard's death. *See* App. 89-90.

election in narrative form, providing that Joan, as his spouse, "shall be" a primary beneficiary:

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

App. 91. These are both true statements, and neither contradicts the prior designation of Joan as Primary Beneficiary with respect to 100% of the IRA, or indicates that the Marital Trust is intended as primary beneficiary.

- The remaining sentences below Richard's designation of Joan as primary beneficiary with respect to 100% of the IRA on the Addendum creates a contingency which would place part of the value of the IRA in the Marital Trust, but that contingency did not occur:

> 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. First, there is no marital deduction to the income tax. Second, with respect to the estate tax, property passing to Joan Y. Bittner as surviving spouse is eligible for a marital deduction, such that no portion would have to be diverted to a marital trust in order to qualify the IRA for a marital deduction to the estate tax. Third, Richard's estate was below the threshold for the federal estate tax. All parties agree that there was no federal estate tax due at Richard's death and that the Marital Trust will not be funded. *See* App. 430, 479-480, Trial Tr. 39:20-22, 382:16-383:2; Defendant-Appellant's Proof Brief at 15, n. 1. Therefore, it was not "necessary" for any of the IRA to achieve a marital deduction in order to "result in no federal income tax." For all of these reasons, the contingency of tax that could be avoided by use of a marital trust never arose. The language quoted in this Paragraph therefore never became operable.

- The IRA Beneficiary Designation provided that successor and contingent beneficiaries were inapplicable if a Trust were designated, but Richard nonetheless listed people (his children). *See* App. 89, 90 ("*Contingent Beneficiaries should be considered unless the primary beneficiary is a trust/estate or the "Per Stirpes" box was selected for all primary beneficiaries."*; Successor Beneficiary(ies): (*Not*

applicable if Trust or Estate is beneficiary)"); *see also* App. 90, 91-92 (checking box for "descendants, per stirpes" and listing children as contingent beneficiaries).

- The statement within the IRA Beneficiary Designation Addendum that Joan "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" is consistent with Joan's status as the primary beneficiary, but would not be true if the Marital Trust received the assets because only as an individual IRA beneficiary would Joan receive *all* annual distributions. *See* 26 U.S.C. § 4974(a); 26 C.F.R. § 1.408-8 ("[A]n IRA is subject to the required minimum distribution rules provided in section 401(a)(9)); 26 C.F.R. § 1.401(a)(9)-5 (specifying amounts of required minimum required distributions). Joan would not receive *all* annual distributions as a beneficiary of the Marital Trust because it limits distributions to income and portions of the required minimum IRA distributions which are principal for trust accounting purposes (under the Uniform Principal and Income Act) would not be distributed to Joan. *See* Iowa Code § 637.421(3) (allocating 10 percent of payments to income and the remainder to principal for, *inter alia*, mandatory IRA payments to a trust under the

Uniform Principal and Income Act). The statements within the IRA Beneficiary Designation can be reconciled with one another only because Joan, and not the Marital Trust, is the designated beneficiary. *See* App. 91.

See App. 81-83.

Rather than interpreting the terms consistent with each other, as the District Court did, Jeffrey scrutinizes isolated excerpts of the IRA Beneficiary Designation to conclude that the Family Trust—which is not even named in the IRA Beneficiary Designation—should receive the IRA's assets instead of Joan.[7] *See* Defendant-Appellant's Proof Brief at 37. Unlike Jeffrey's favored interpretation, the District Court's ruling interprets all of the terms "as consistent with each other." *See Pillsbury Co. v. Wells Dairy, Inc.*, 752

[7] Defendant-Appellant's brief also mischaracterizes statements regarding the IRA Beneficiary Designation's effect made by a U.S. Bank Trust Officer (who observed that the Marital Trust or Joan was the beneficiary before realizing that the Marital Trust would not be funded) and an outside attorney (who, like the District Court, concluded that Joan was named individually). This is readily apparent on review of the exhibits cited, but elucidation of the context of any statements at this juncture would be superfluous because only the Court's legal conclusion regarding the effect of the written instrument has any significance. *See, e.g., In re Det. of Palmer*, 691 N.W.2d 413, 419 (Iowa 2005), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 708 n.3 (Iowa 2016) (evidence concerning a witness's legal conclusion "invades the province of the court").

N.W.2d 430, 436 (Iowa 2008); *see also* App. 81-83, Ruling on Petition for Declaratory Judgment.

Jeffrey is incorrect that the U.S. Bank and "District Court provided no explanation for the last paragraph of Richard's IRA Beneficiary Designation. *See* Defendant-Appellant's Proof Brief at 24-25. Part B of the Addendum states as follows:

B. Contingent Beneficiaries:

1) Name: Kimberly Montgomery
U.S. Citizen: Yes
Relationship: Daughter
SSN: [redacted]
DOB: [redacted]
Share: 25%
Address: . . .

2) Jeffrey S. Bittner
U.S. Citizen: Yes
Relationship: Son
SSN: [redacted]
DOB: [redacted]
Share: 25%
Address: . . .

3) Todd R. Bittner
U.S. Citizen: Yes
Relationship: Son
SSN: [redacted]
DOB: [redacted]
Share: 25%
Address: . . .

1) [sic]Lynn Von Schneidau
U.S. Citizen: Yes

Relationship: Daughter
SSN: [redacted]
DOB: [redacted]
Share: 25%
Address: . . .

> Upon the death of my wife, my children, Kimberly Montgomery, Jeffrey S. Bittner, Todd R. Bittner and Lynn Von Schneidau, shall become the primary beneficiaries and each shall have an equal share. In the event any child of mine shall not survive me and my wife and is survived by descendants, then such descendants shall succeed to the interest of my child (or children) herein.

App. 91-92. Jeffrey argues that the District Court's ruling renders the final paragraph within this Contingent Beneficiaries section of the IRA Beneficiary Designation superfluous because it would not give effect to language making Richard's children (or their surviving descendants) primary beneficiaries "upon the death of" Joan. *See* Defendant-Appellant's Proof Brief at 24-28.

This faulty theory runs contrary to the text of the IRA Beneficiary Designation that Richard signed. The list of "Contingent Beneficiaries" on the "Addendum to IRA Beneficiary Designation" are individuals who become beneficiaries if the primary beneficiary—here, Richard's wife, Joan—had not been living when Richard died:

> B. Contingent Beneficiary(ies):
>
> . . .
>
> The following 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). While the narrative in the Contingent Beneficiaries section of the Addendum might have altered the default succession insofar as it placed Richard's grandchildren ahead of any son- or daughter-in-law, the point is moot. Joan survived Richard, so the contingency did not occur. App. 428, Trial Tr. 36:10-11.

As the District Court found, the Contingent Beneficiaries section of the Addendum instead runs contrary to Jeffrey's position that a trust is the beneficiary. Trial testimony highlighted that contingent beneficiaries would not have been listed at all if a trust were the primary beneficiary. App. 426-428, Trial Tr. 34:14-36:2; App. 89. In its Ruling, the District Court specifically observed that "Richard elected to name his children as contingent beneficiaries despite the clear language of the IRA beneficiary designation form that this was not necessary if a trust or estate were listed as the primary beneficiary." App. 82-83. The District Court's "interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991).

In sum, the District Court's Ruling explains why Joan was listed as the "100%" primary beneficiary, and why Richard filled out Parts B and C—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. 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 id.* The District Court's Judgment that the IRA Beneficiary Designation form clearly designates Joan, as Richard's wife, should be affirmed.

2. The District Court Alternatively Found Jeffrey Failed to Adduce Evidence to Overcome Clear Language in the IRA Beneficiary Designation.

While the District Court found the IRA agreement clearly designates Joan individually, it alternatively found that Jeffrey's evidence "does not overcome the clear language set forth in the IRA Beneficiary Designation." App. 84. Further, Jeffrey's evidence was "somewhat contrary" to Language in Richard's Last Will and Testament which "indicates a desire of Richard to equalize the assets between himself and his wife." *Id.* Likewise, even if parol evidence could be considered (it cannot, *see infra* § II), Jeffrey's offer of proof includes the Last Will and Testament Richard executed on January 11, 2010—the same day he signed the IRA Beneficiary Designation—that specifically excludes IRA assets (i.e., "any and all" that reach the Marital Trust) from ever

being transferred to the Family Trust. *See* App. 145, 147, Art. IX, XI(D); *see also* App. 411-413, Trial Tr. 18:19-20:17. The District Court's finding and judgment that Richard designated his wife, Joan, should be affirmed.

II. The District Court Properly Excluded Extrinsic Evidence Regarding Richard's Intent as Irrelevant Parol Evidence

A. Preservation of Error and Standard of Review

U.S. Bank does not dispute Defendant's preservation of his right to appeal the District Court's parol evidence ruling and agrees that rulings on the admissibility of evidence are reviewed for any "correction of errors at law." *Garland*, 648 N.W.2d at 69.

B. The District Court Properly Excluded Extrinsic Evidence Regarding Richard's Intent.

1. The IRA Beneficiary Designation and IRA Trust Agreement Were Fully Integrated, so the District Court's Exclusion of Evidence Must be Affirmed.

The District Court properly excluded extrinsic evidence of Richard's intent under the parol evidence rule because the unambiguous IRA Beneficiary Designation (App. 89-92) and IRA Trust Agreement (App. 93-102) formed a fully integrated agreement with respect to IRA beneficiaries. "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 received by U.S. Bank (App. 89) was the instrument where he would name beneficiaries to his IRA, and any previous designation would be revoked:

> I may name one or more beneficiaries to take the undistributed portion of this trust upon my death or the death of my surviving spouse, as the case may be, subject to the terms of this Agreement by filing with Trustee a form acceptable to the Trustee. Any IRA Beneficiary Designation shall not become effective until signed, dated and received by Trustee. The last such IRA Beneficiary Designation received by Trustee shall revoke all previous designations. If no IRA Beneficiary Designation is filed with Trustee or if such IRA Beneficiary Designation names only deceased beneficiaries, distribution shall be made as follows: to my spouse, if my spouse is surviving . . . .

App. 99, Art. VIII(8) (emphasis added).

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. The District Court's ruling excluding extrinsic evidence (including documentary evidence of Richard's estate plan and testimony from Lucille Oseland, Robert Lambert, and Jeffrey himself, *see* Defendant-Appellant's Brief at 37-49), must be affirmed.

2. The District Court's Exclusion of Extrinsic Evidence Must Be Affirmed Because Jeffrey Offered Exhibits and Testimony for a Prohibited Purpose.

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), the proposed exhibits and testimony remain inadmissible because they are 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 believes that the Family Trust (which is not named anywhere in the IRA Beneficiary Designation) "is the lawful owner of the Richard Bittner IRA," Defendant-Appellant's Proof Brief at 37, and he impermissibly sought to adduce evidence to support this conclusion. As to the only trust named, the

Marital Trust, Jeffrey concedes that the tax advantage that was contingent to redirecting a portion of assets into the Marital Trust named in the IRA Beneficiary Designation did not exist and 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. The District Court's exclusion of this evidence must be affirmed.

III. U.S. Bank Had Authority to Seek Declaratory Judgment Where to Direct Assets It Held in Its Role as the IRA's Sole Trustee

A. Preservation of Error and Standard of Review

Defendant-Appellant failed to preserve error on his unclean hands defense and/or his allegation that U.S. Bank engaged in an ultra vires act 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. Jeffrey did not raise unclean hands in his January 12, 2021 Pretrial Brief. At trial, he did not press his unclean hands affirmative defense or present arguments concerning how it or any allegedly ultra vires act may impede the District Court from ruling where U.S. Bank should direct the assets within Richard's IRA. Accordingly, 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.

Review of a case tried in equity is de novo. Iowa R. App. P. 6.907; *Garland*, 648 N.W.2d at 69. "We give weight to the findings of the trial court, particularly with regard to the credibility of witnesses, but we are not bound by them." *Garland*, 648 N.W.2d at 69.

B. Jeffrey's Equitable Defenses Have No Application Here.

Richard agreed to maintain his IRA with U.S. Bank. *See* App. 93-102. Far from "serving as Joan Bittner's advocate"[8] or any sort of "trustee by implication,"[9] U.S. Bank was the sole, named Trustee of Richard's IRA Trust

[8] Defendant-Appellant's Proof Brief at 49.
[9] Defendant-Appellant's Proof Brief at 58.

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 may direct the IRA assets to the correct individual without contractual liability to another. Due to U.S. Bank's obligations as 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. U.S. Bank had authority to file its Petition for Declaratory Judgment. *See* Iowa R. Civ. P. 1.1101, 1.1102 (authorizing declaratory judgments to construe written instruments); *see also Kline v. SouthGate Prop. Mgmt., LLC*, 895 N.W.2d 429, 437 (Iowa 2017) (standing requires "(1) . . . a specific personal or legal interest in the litigation and (2) whether that interest has been injuriously affected.").

The subterfuge in Jeffrey's characterization of U.S. Bank's position in this case is to presume it 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.

Jeffrey's request that this Court abandon the District Court's legal conclusion regarding the rightful beneficiary of IRA assets held by U.S. Bank defies the foregoing record and has no source of legal authority. First, U.S. Bank's declaratory judgment petition did not comprise an *ultra vires* act as Jeffrey contends because it merely fulfilled U.S. Bank's contractual obligation to transfer Richard's IRA assets to the correct beneficiary. *See* App. 89; Iowa R. Civ. P. 1.1101, 1.1102 (authorizing declaratory judgments to construe written instruments).

Second, the equity maxim of clean hands "expresses the principle that where a party comes into equity for relief he or she must show that his or her conduct has been fair, equitable, and honest as to the particular controversy in

issue." *Opperman v. M. & I. Dehy, Inc.*, 644 N.W.2d 1, 6 (Iowa 2002) (quoting 27A Am.Jur.2d Equity § 126, at 605 (1996)). "What underlies the maxim is the principle that 'equity will not aid an applicant in securing or protecting gains from wrongdoing or in escaping its consequences.'" *Id.* (emphasis omitted).

Far from lending "the court's aid to fraudulent, illegal or unconscionable conduct," *Myers v. Smith*, 208 N.W.2d 919, 921 (Iowa 1973), U.S. Bank fulfilled its obligation as Trustee of the IRA. Moreover, because the District Court reached an independent legal conclusion regarding the effect of the IRA Beneficiary Designation, and the money must be transferred to the correct beneficiary, no party could be injured or prejudiced by U.S. Bank, as sole Trustee of Richard's IRA, seeking direction where to transfer those assets.[10] *See* 27A Am. Jur. 2d Equity § 26 (2021) ("As a general rule, the doctrine of unclean hands is applicable only where the party seeking to invoke it was injured, damaged, or prejudiced by the alleged wrongful conduct."); *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76, 81 (Iowa

[10] U.S. Bank's role in this case as Trustee of the IRA cannot impede distribution of IRA assets to the proper beneficiary any more than Jeffrey's attempt to intervene as trustee of the Richard's Estate. *See* App. 19-22. Neither entity's participation is material to the legal conclusion that Joan is the 100% beneficiary.

1984) (assuming, *arguendo*, conduct was wrongful, conduct did not injure, damage, or prejudice defendant).

CONCLUSION

For the reasons stated herein, Plaintiff-Appellee U.S. Bank respectfully requests that the Court affirm the judgment below.

REQUEST FOR SUBMISSION WITHOUT ORAL ARGUMENT

Plaintiff-Appellee U.S. Bank requests submission without oral argument.

Dated: September 21, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2021, 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). It contains 7,786 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