BEFORE THE IOWA SUPREME COURT

No. 23-0482

DAVID A. VAUDT and
JEANIE K. VAUDT,

Plaintiffs-Appellants,

vs.

FREDESVINDO ENAMORADO DIAZ; DENICE ENAMORADO; WELLS FARGO BANK, N.A.; PREMIER CREDIT UNION; STATE OF IOWA; CHILD SUPPORT RECOVERY UNIT; AND DELMY BONILLA,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY EQCE087793
THE HONORABLE ADRIA KESTER

APPELLANTS' BRIEF

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ISSUES PRESENTED

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Heer v. Thola, 613 N.W.2d 658 (Iowa 2000)

Bd. of Water Works Trustees of City of Des Moines v. Sac Cnty. Bd. of Supervisors, 890 N.W.2d 50, 61 (Iowa 2017)

Cuthbertson v. Locke, 70 Iowa 49, 30 N.W. 13, 13–14 (1886)

Georgia Pac. Gypsum, L.L.C. v. New NGC, Inc., 797 N.W.2d 624, 2011 WL 441468 (Iowa Ct. App. 2011)

11 C.J.S. Boundaries § 148

Marlin M. Volz, Jr., *Iowa Practice: Methods of Practice*, § 4:1 (2010)

II. Whether *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000), which applied the statute of limitations in section 614.14(5) to the unique characteristics of an action for boundary by acquiescence also applies to the legally distinct claim of adverse possession?

Heer v. Thola, 613 N.W.2d 658 (Iowa 2000)

Carpenter v. Ruperto, 315 N.W.2d 782, 784 (Iowa 1982)

Joyce Palomar, *Adversely Possessed Land*, 1 PATTON AND PALOMAR ON LAND TITLES § 226 (3d ed.)

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Effect as vesting and divesting title—Character of title acquired, 4 TIFFANY REAL PROP. § 1172 (3d ed.)

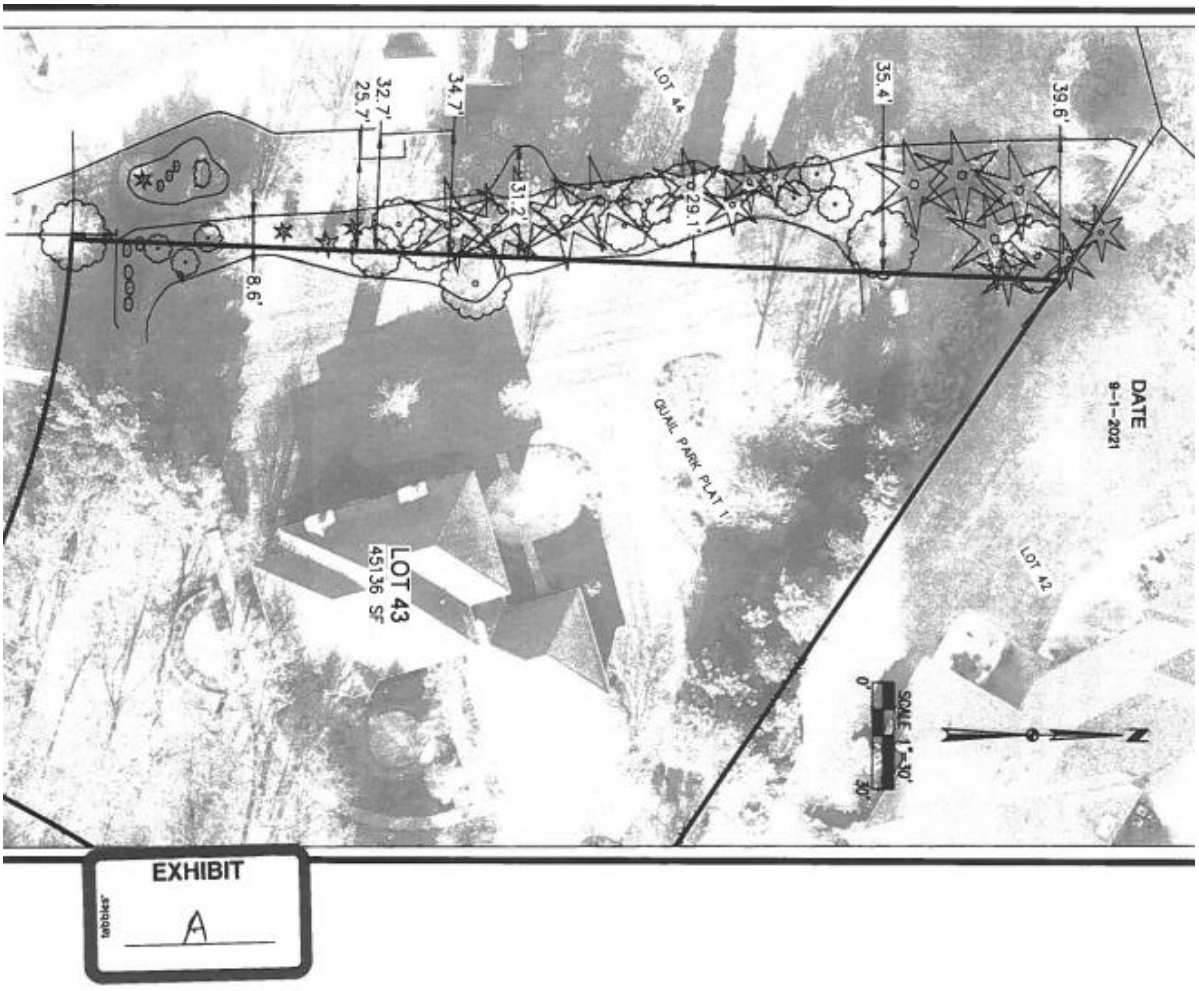
ROUTING STATEMENT

The district court dismissed the petition—which states claims for boundary by acquiescence and adverse possession—based on the one-year statute-of-limitations period in Iowa Code section 614.14(5)(b) for actions that arise out of the transfer of property by trustee. The district court recognized that its ruling was wrong, as an original matter, based on the terms of the statute but believed that the outcome was nevertheless compelled by this Court's split decision in *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000).

This Court should keep this case because *Heer* was wrongly decided and only this Court can fix it. At the very least, this Court should make clear that *Heer's* holding is limited and applies only to actions for boundary by acquiescence. Whatever prudential reasons there might be for not overruling a decision that incorrectly interprets a statute, those reasons should not compel the Court to extend that incorrect holding even further.

STATEMENT OF THE CASE AND FACTS

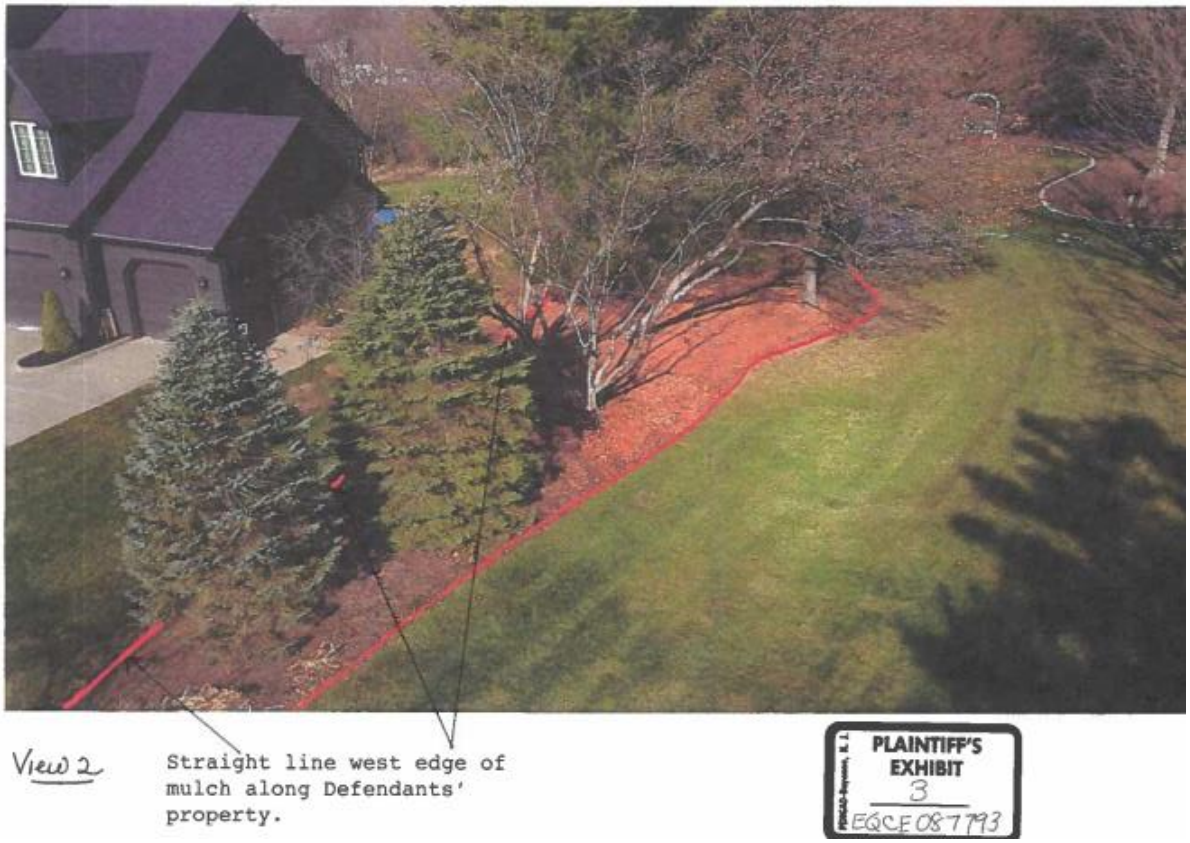
This is a boundary and property dispute between neighbors. Over 23 years ago, David and Jeanie Vaudt created a landscaped barrier between their property and their neighbors'. App. 5, 30, 37. That landscaped area—which was marked by trees, bushes, and mulch—is depicted, through sketch markings, near the top of the photograph below.[1]



[1] The image is attached to the Vaudts' petition as Exhibit A, which is at Appendix 9.

The dispute in this case is about that landscaped area. For over 30 years (even before the Vaudts put in the landscaping) the Vaudts exclusively maintained this area and were in sole possession of it. App. 4-5. They weeded it, fertilized it, and (starting in 1999) mulched the area and planted flowers, bushes, and trees within it. App. 69. Until shortly before this lawsuit, they exclusively maintained the area and acted, for all relevant purposes, as the owners of the property, treating the west edge of the mulch (near the top of the photo above) as the property line. App. 70.

In July 2021, the Vaudts' new neighbors, Fredesvindo Enamorado Diaz and Denice Enamorado, surveyed their property for purposes of putting in a swimming pool and fence. App. 71. During that survey, the Enamorados discovered that the landscaped area encroached onto their property, at least as their property is described in the plat. App. 5 The photograph below shows the landscaped area running between the Vaudts' and the Enamorados' properties, with the Enamorados' house on the left side of the photograph.



The Vaudts have, since purchasing the property in 1991, treated the entire landscaped area as being part of their lot, with the red line on the left-hand side of the photo marking the boundary between their property and the Enamorados'. App. 4-5, 70, 84. The platted boundary—the one the Enamorados discovered during their survey—runs through the landscaped area, essentially cutting through the evergreen trees at the bottom left-hand corner of the photograph.[2]

[2] The photograph is available at Appendix pages 77 and 89. *See also* App. 9-10.

With the Enamorados disputing the boundaries between the two properties following their survey, the Vaudts filed the petition in this case, stating two causes of action. First, the Vaudts asked the district court, per a special action under Iowa Code Chapter 650, to establish the boundary between the two properties, with the western edge of the landscaped area (the red line on the left-hand side of the photo above) as the boundary that had been acquiesced in for more than ten years. Second, the Vaudts asked the district court to declare, per the statute of limitations in Iowa Code section 614.1(5), that they hold title to the landscaped area by adverse possession.

The district court did not reach the merits of those claims. Wells Fargo, who is also a defendant in this case because it holds the Enamorados' mortgage,[3] filed a motion to dismiss, arguing that the Vaudts' claims were barred by the statute of limitations in Iowa Code section 614.14(5)(b), which bars adverse property claims that arise "by reason of a transfer of an interest in real estate by a trustee or purported trustee" and are filed more than one year after the trustee deed is recorded. Iowa Code § 614.14(5). As alleged in the motion to dismiss—but not stated in the Vaudts' petition—the Enamorado's purchased their property through a trustee's deed on March 23, 2021, and recorded that deed on

[3] Mortgage Electronic Registration Systems, Inc. and Fidelity Bank were the original financial defendants, but Wells Fargo purchased the mortgage on the Enamorado's property. App. 11.

June 3, 2021. App. 13-15. The Vaudts filed their petition the next year, on June 27, 2022.

The Enamorados made the same statute-of-limitations argument, although they did so through a motion for summary judgment. The Vaudts filed a cross motion for summary judgment on the merits of their claims, and the district court heard oral argument on all motions at the same time. (The hearing was not recorded.)

The district court considered evidence outside the petition's allegations (i.e., the facts surrounding the trustee warrant deed) and granted the motion to dismiss, concluding that the one-year statute of limitations in section 614.14(5)(b) applies to the Vaudts' claims. App. 134-39; 152-54. The district court expressed agreement with the Vaudts' position that, per the statutory terms of Iowa Code section 614.14(5), the one-year limitations period does not apply to their claims of boundary by acquiescence and adverse possession because those claims did not arise "by reason of" the trustee's conveyance of the property to the Enamorados. App. 137 n.1, 153. But the district court nevertheless ruled against the Vaudts because it felt "bound to follow" this Court's decision in *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000). App. 137 n.1 (expressing agreement with then-Justice Cady's dissent); App. 153 (same). The Vaudts filed a timely notice of appeal.

STANDARD OF REVIEW AND ERROR PRESERVATION

The district court characterized its order as a ruling on a motion to dismiss but the court based its decision on evidence (the existence of and timing of the transfer of property through a trustee's deed) outside the petition. For that reason, and because all parties submitted evidence outside the four corners of the petition, this Court "may treat [the] motion to dismiss as a motion for summary judgment." *See Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 566 (Iowa 2018). Either way, the standard of review is the same: correction of errors at law. *UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 59 (Iowa 2019).

The Vaudts resisted Wells Fargo's motion to dismiss, as well as the Enamorados' motion for summary judgment, preserving their argument that the statute of limitations does not apply to their claims. App. 18-22. *See also* Dkt. No. 43.

ARGUMENT

Iowa Code section 614.14(5)(b) states:

> An action based upon **an adverse claim arising** on or after January 1, 2009, **by reason of** a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise.

(emphasis added). By any plain and common-sense understanding of those terms, this limitations period does not apply to the Vaudts' special action to

establish a boundary by acquiescence under Iowa Code section 650.6 or to their claim for adverse possession. As alleged in their petition, the ten-year periods for boundary by acquiescence and adverse possession expired before—and thus the Vaudts' claims arose *before*—January 1, 2009.[4] But more important, those claims did not arise "by reason of" the conveyance of their neighbor's property by trustee's warranty deed. Instead, the claims existed well before the Enamorados purchased their property—indeed, through adverse possession, the Vaudts have held title to the entirety of the landscaped area for years. *See Fisher v. Paup*, 180 N.W. 167, 168 (1920) (explaining that an adverse possessor acquires title upon the expiration of the statutory period).

The district court appeared to agree with this common-sense understanding but felt compelled to rule against the Vaudts based on this Court's split decision in *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000). But at most, the district court was half right. In *Heer*, this Court did apply section 614.14(5)(b) to bar an action to establish a boundary by acquiescence. (And this Court should now correct that error and overrule *Heer*.) But even if *Heer* is still good law, neither its direct holding nor the majority's reasoning applies to a claim for adverse possession.

[4] See Pet. ¶¶ 7, 11; Iowa Code § 614.1(5) (ten-year statute of limitations for recovery of real property—i.e., adverse possession); Iowa Code §§ 650.6, .10, .14 (ten-year period for acquiescence).

The Court should therefore overrule *Heer* and reverse the district court's decision in total. And regardless of whether the Court overrules *Heer*, it should at least reverse the district court's dismissal of the adverse-possession claim and remand the case for further proceedings.

I. This Court's decision in *Heer* was manifestly wrong when decided and should be overruled.

Under Iowa Code Chapter 650, a landowner can bring a special action against a contiguous landowner to have the "corners or boundaries [of their property] ascertained and permanently established." Iowa Code § 650.1. As part of that proceeding, which is characterized by Iowa Code as a special action,[5] "[e]ither plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years." Iowa Code § 650.6. If the court then finds that the alleged boundaries and corners have indeed been recognized and acquiesced in for ten years, they "shall be permanently established." Iowa Code § 650.14.

The Vaudts' special action for the establishment of a boundary by acquiescence did not arise "by reason of" a transfer of property by a trustee, as section 614.14(5)(b) requires. As a result, the one-year statute of limitations does not apply. The district court agreed with that, as an original matter, but felt bound

[5] Iowa Code § 650.4.

by this Court's decision in *Heer*. This Court should now overrule *Heer* because it was manifestly wrong when decided.

In *Heer*, the plaintiffs, like the Vaudts, filed an action under Iowa Code Chapter 650 for establishment of a boundary by acquiescence, with the defendant neighbors having allegedly acquiesced in the boundary for over the ten-year period required by Iowa Code section 650.14. *Heer,* 613 N.W.2d at 659. Like Wells Fargo and the Enamorados, the defendant (the adjoining landowner) claimed that the action was barred by the one-year limitations period in section 614.14(5)(b) for actions arising by reason of a transfer of property by a trustee or purported trustee, because the plaintiffs filed their action one year after the neighbor sold their property through a trustee's deed.

The plaintiffs claimed, among other things, that the statute of limitations did not apply because the establishment of the boundary by acquiescence did "not 'aris[e] ... by reason of a transfer of an interest in real estate by a trustee'"; instead, it arose "from the acquiescence of [the defendant] and his predecessors" in the purported boundary line. *Id.* at 662. This Court disagreed, though with little explanation. The majority found it important that "title by acquiescence could not be established" under the express terms of section 650.14," until "after the [plaintiffs] filed their chapter 650 action." *Id.* Thus, when the plaintiffs filed their action, they "did not have title" and "record title was still in [the defendant], as grantee under the trustee's deed." *Id.* The majority therefore concluded,

without any further explanation or logic, that the plaintiffs' claim arose "'by reason of' the trustee's deed." *Id.* "If it had not been for the trustee's deed," the majority stated, then "this case would never have arisen." *Id.*

Then-Justice Cady dissented, joined by Chief Justice McGiverin. "A claim of acquiescence does not arise by reason of a transfer of land by a trustee's deed, but by conduct and consent of two adjoining property owners or their predecessors in interest," he explained. *Id.* at 663. Indeed, "the nature of the underlying recorded title to the land is totally unrelated to a claim of acquiescence, and it cannot be said that the acquisition of land by a trustee's deed gives rise to a claim of boundary by acquiescence. Acquiescence and title by deed are totally unrelated legal concepts." *Id.*

Justice Cady agreed that the lawsuit might not have occurred if the property had not been transferred to a new owner (which happened to be done by a trustee deed, as opposed to some other type of deed). In other words, because the plaintiffs were presumably getting along with the old neighbors, who were the ones who had allegedly acquiesced to the boundary, it was possible that the conflict between the plaintiffs and the new neighbor (the defendant) would not have occurred "but for" the transfer of ownership of the property. But as Justice Cady explained, "arising by reason of," as used in section 614.14(5)(b), is not based on some but-for "factual connection" of what ultimately caused the plaintiff to file the lawsuit. Instead, "arising by reason of" refers "to the causal

connection between the act and the liability"—that is, the facts that give rise to the underlying legal claim. In that case (as in this one) that was the neighbor's ten-year acquiescence of the boundary. *Id.*

"I understand why our legislature would place a one-year statute of limitations on legal claims which are adverse to and arise from a trustee's deed," Justice Cady wrote. *Id.* Adverse claims may arise, for example, if the trustee was not authorized to convey title to land or did not properly exercise her fiduciary duties in doing so. "[B]ut I cannot conceive of any reason," Justice Cady said, that "our legislature would include claims with no legal connection to a deed, such as a claim for boundary by acquiescence." *Id.* at 664. Justice Cady would have therefore interpreted section 614.14(5)(b) to give meaning to the phrase "*by reason of* a transfer in real estate by a trustee" and allowed the plaintiffs to pursue their special action for establishment of a boundary under Chapter 650. *Id.*

Justice Cady was right, and we cannot say it any better. This Court should overrule *Heer*.

Wells Fargo and the Enamorados will likely ask this Court to stand by *Heer's* flawed reasoning based on stare decisis grounds, especially because the decision is based on an interpretation of a statute. But even if legislative acquiescence is a sound doctrine, "principles of stare decisis and legislative acquiescence in combination are not absolute, and [this Court] may overrule prior decisions when error is manifest, including error in the interpretation of

statutory enactments." *Bd. of Water Works Trustees of City of Des Moines v. Sac Cnty. Bd. of Supervisors*, 890 N.W.2d 50, 61 (Iowa 2017) (internal quotations omitted).

The majority's error in *Heer* is indeed manifest. The Court's interpretation effectively amends the statute by deleting the phrase "by reason of a transfer" by a trustee, at least for actions under Chapter 650 for establishment of a boundary by acquiescence. Under *Heer's* logic, every time a neighboring property is conveyed by a trustee, a subsequent action under Chapter 650 for establishment of a boundary is—as a matter of law—deemed to be "by reason of" that transfer. That makes no sense, and the majority in *Heer* did not provide any reasoning to support it.

But there is even more reason to disregard *Heer*. The majority's holding as it relates to the interpretation of "by reason of" was (confusingly) based on its incorrect assumption that claim establishment of a boundary under Chapter 650 is an action "to establish *title* by acquiescence." In fact, the majority used that phrase ("title by acquiescence") 20 times in its decision, and its holding— that "that the establishment of *title by acquiescence* is effective only on a finding by the court that the requirements for acquiescence have been met"—became the foundation for its conclusion that the statute of limitations barred the claim. *Heer*, 613 N.W.2d at 662 (emphasis added).

The problem with that line of reasoning—which was driven by the parties' arguments and framing of the case—is that it misstates and misunderstands what

an action under Chapter 650 is. In some states, "a boundary by acquiescence establishes title, or determines the point at which prior title vested, and extinguishes the other owner's legal title, leaving the other owner with only bare record title." 11 C.J.S. Boundaries § 148. But in other states—and Iowa is one of them—"acquiescence establishes a boundary, *not* title to land." *Id.* (emphasis added). "The object of these proceedings [under Chapter 650] is" as this Court has explained, to establish corners and lines, and *not the title* or right of possession of adverse claimants." *Cuthbertson v. Locke*, 70 Iowa 49, 30 N.W. 13, 13–14 (1886). Thus, "[n]o provision is made by the statute authorizing the proceedings for the trial of issues involving title." *Id.*

This difference, which the Court got wrong in *Heer*, matters because it means that the statute of limitations for actions about title do not apply to an action to establish boundary by acquiescence under Chapter 650. That is what this Court held in *Cuthbertson*, 30 N.W. at 13, and that is what the Court of Appeals explained much more recently in *Georgia Pac. Gypsum, L.L.C. v. New NGC, Inc.*, 797 N.W.2d 624, 2011 WL 441468 (Iowa Ct. App. 2011) (Mansfield, J.). "An action under chapter 650," then-Judge Mansfield explained, "is a special action to establish corners or lines (and not the title or right of possession of adverse claimants)." *Georgia Pac.*, 2011 WL 441468 at *4. As a result, "the statute of limitations [for recovery of real property] does not apply to claims brought under chapter 650." *Id.*; *see also* Marlin M. Volz, Jr., *Iowa Practice: Methods of Practice*,

§ 4:1 (2010) (explaining a proceeding under chapter 650 may be used to establish a boundary line established by acquiescence and the statute of limitations for recovery of real property does not apply to such proceedings).

Because of how the parties argued the case in *Heer*—meaning that they assumed that an action for establishment of boundaries is an action for title—this Court confused the issues, which in turn affected its application of the statute of limitations. That misunderstanding compounded the errors in an already confusing decision and, if it stays on the books any longer, could lead to problems that go well beyond the statute of limitations under section 614.14(5)(b).

As noted by the district court, the majority's decision in *Heer* also creates harmful policy consequences. It forces property owners who have lived peacefully beside their neighbors to automatically file a lawsuit to establish a boundary any time there is a transfer of their neighbors' property through a trustee's deed, even if it does not yet appear that there will be any dispute with the new neighbors over the boundary. Because failing to file the lawsuit within the year could realign the property boundaries that the parties have relied on for years. In other words, *Heer* forces homeowners to start a fight with their new neighbors when there may be no reason to do so. It also forces homeowners to stay super vigilant, being acutely aware of exactly when their neighbors sell their

house, when they register their deed, and what type of deed it is. That is unreasonable, especially when tied to just a one-year limitation period.

Heer's holding also puts parties who purchase their property from a trustee in a much better position than those who do not. Yet, when it comes to actions of boundary by acquiescence, there is no reason to treat purchasers differently based on whether they bought their home from the owner, a trustee, or a corporate representative. There *is* a reason to treat them differently if the claim arises "by reason of" the trustee's transfer, which is to say that the statute of limitations applies (as written) only to claims that are focused on the trustee's authority, or a claim aimed at some deficiency of the deed. But none of that is at issue here, so the limitations period should not apply.

The district court's dismissal of the action to establish a boundary by acquiescence was based solely on *Heer*, which was wrongly decided. This Court should reverse *Heer* and remand the case for further proceedings. There is no evidence in the record, nor is there any legal basis to claim, that the Vaudts' Chapter 650 action arose out of the transfer of their neighbor's property by trustee deed. The statute of limitations in section 614.14(5)(b) does not apply.

II. Even if this Court does not overrule *Heer*, its holding does not apply to claims for adverse possession.

Adverse possession is a distinct legal theory from boundary by acquiescence. As one commentator put it: "In title disputes, the basic issue is

whether some person owns anything at all. In boundary disputes, the issue is not who owns land, but how far geographically that ownership extends. Adverse possession applies in both title and boundary disputes." Jeffrey Evans Stake, *The Uneasy Case for Adverse Possession*, 89 GEO L.J. 2419, 2421 (2001).

In Iowa, the doctrine "is based on the ten-year statute of limitations for recovery of real property in section 614.1(5)." *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). If there is "hostile, actual, open, exclusive and continuous possession, under a claim of right or color of title, for at least ten years," the possessor acquires title to that property. *Id.*

Like the Vaudts' action for boundary by acquiescence, their claim for adverse possession did not arise "by reason of a transfer" of their neighbor's property by a trustee. Instead, it arose because, for more than ten years, the Vaudts had hostile, actual, open, exclusive, and continuous possession of the landscaped property under a claim of right. App. 6 (Pet. ¶ 20.) The district court did not disagree but believed that *Heer* nevertheless controlled the application of section 614.14(5)(b) to adverse-possession claims in the same way it controls boundary-by-acquiescence actions. That is incorrect.

The majority's holding in *Heer*—that the boundary-by-acquiescence action always arise from a trustee's deed—was based on the Court's conclusion that title is not established in an acquiescence claim when the ten-year period runs,

but instead is only established after the district court enters its decision. Here is the entirety of the Court's analysis on the issue:

> [T]he Heers contend their action does not "aris[e] ... by reason of a transfer of an interest in real estate by a trustee." Rather, they claim, their action arises from the acquiescence of Thola and his predecessors. However, for the reasons already discussed, title by acquiescence could not be established until after the Heers filed their chapter 650 action. As of that time, the Heers did not have title to it; record title was still in Thola, as grantee under the trustee's deed. The Heers' claim was adverse and arose "by reason of" the trustee's deed.

Heer, 613 N.W.2d at 662. As discussed above, boundary by acquiescence actions are never about title, so the entire analysis is incorrect. But assuming, for the sake of argument, that the Court was right about title, and assuming that *Heer* is still good law, the majority's reasoning in that case does not apply to a claim for adverse possession. That's because, under the doctrine of adverse possession, "[t]itle ripens in the adverse possessor automatically by operation of law at the end of the requisite adverse possession period, and no judicial determination is required to extinguish the prior claim." Joyce Palomar, *Adversely Possessed Land*, 1 PATTON AND PALOMAR ON LAND TITLES § 226 (3d ed.). That is general hornbook law but, more important, it is Iowa law. Indeed, in Iowa, title gained by adverse possession is marketable, even without a court order. *See Deutsmann v.*

Kuntze, 147 Iowa 158, 125 N.W. 1007, 1008–09 (1910); *Fisher v. Paup*, 191 Iowa 296, 180 N.W. 167, 168 (1920).[6]

Because the Vaudts acquired title by adverse possession years ago—well before their neighbors conveyed their property to the Enamorados by trustee deed—the holding of *Heer*, as illogical as it is in the first place, does not apply. So even if the Court does not reverse *Heer*, it should certainly not extend it. Aside from being inconsistent with the terms of section 614.14(5)(b)—because the claim did not arise out of the trustee's transfer—it would cause a conflict with the ten-year statute of limitations in section 614.1(5) and set up a scenario where neither neighbor could sue to quiet title. The landscaped area between the Vaudts' and the Enamorados' property would become the 38th parallel—a land that no person may trespass on or possess.

Under section 614.14(5)(b), the one-year statute-of-limitations period applies only to claims that arise out of the transfer of the property by a trustee.

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[6] *See also* PATTON AND PALOMAR ON LAND TITLES § 226 ("As for attempted conveyances by the adverse possessor, once a party adversely possesses for the requisite period under local law, the possessor can convey good title to a third person, without having first to obtain a judicial determination that title has transferred."); *Effect as vesting and divesting title—Character of title acquired*, 4 TIFFANY REAL PROP. § 1172 (3d ed.) ("In other words, once the statute has run, the adverse possessor has an indefeasible title divestible only by his conveyance or subsequent disseisin for the statutory period; his title cannot be lost by mere abandonment, cessation of occupancy, expression of willingness to vacate, acknowledgment, or recognition of title in another, subsequent legislation, or survey.").

Because the Vaudts adverse-possession claim has no connection to the trustee's conveyance—but instead arises out of the Vaudts' actions for the ten-year statutory period—the district court's dismissal must be reversed.

CONCLUSION

Because *Heer* is manifestly wrong, it should be overruled and the district court's judgment reversed in its entirety. And, even if *Heer* still stands, its holding does not apply to claims of adverse possession, so the district court's dismissal of that claim should be reversed, and the case remanded for further proceedings.

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PROOF OF SERVICE

I hereby certify that on the 28th day of August, 2023, I electronically filed this brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

/s/ Ryan Koopmans

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 4,427 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2007 in Garamond 14 pt.

Dated: 8/28/23

/s/ Ryan Koopmans