

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' REPLY BRIEF

Ryan G. Koopmans, AT0009366
KOOPMANS LAW GROUP LLC
500 East Court Ave., Suite 420
Des Moines, IA 50309
Telephone: (515) 978-1140
E-Mail: ryan@koopmansgroup.com

ATTORNEY FOR APPELLANTS

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Heer v. Thola</i> , 613 N.W.2d 658 (Iowa 2000)	passim
<u>Statutes</u>	
Iowa Code § 614.14	passim

This is an unusual reply, because there is virtually nothing to reply to.

The Vaudts provided two reasons for reversing the district court's ruling dismissing their case. First, they argued that *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000), which was the sole basis for the district court's ruling, is manifestly wrong and should be overruled. Second, they argued that *Heer* does not extend to claims for adverse possession, so even if the Court does not overturn *Heer*, the dismissal of the adverse-possession claim should be reversed. Wells Fargo did not respond to either argument, and the Enamorados did not even file a brief.

As for whether *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000) should be overruled, the Vaudts provided two arguments on why this Court's decision was manifestly wrong when decided. First, as explained in the opening brief, *Heer* deleted the words "by reason of" from the statute. Iowa Code section 614.14(5)(b) states that an action based on an adverse claim that arises "*by reason of* a transfer in real estate by a trustee, or purported trustee, shall not be maintained" more than one year after the trustee's deed is recorded. But under *Heer's* holding, an action for boundary by acquiescence is barred one year after a trustee's deed is recorded, *regardless* of whether that claim arises "by reason of" that deed. Or stated another way, under *Heer*, if a property was sold by a trustee's deed, then every action for boundary by acquiescence that takes place after the sale is "by reason of" the trustee deed. That makes no sense, and Wells Fargo does not say otherwise.

The Vaudts also explained that this Court’s underlying rationale for the *Heer* holding—that a boundary-by-acquiescence action is a dispute about title—was based on a misunderstanding of the law, providing further reason to overturn the decision. But Wells Fargo does not even respond to that argument either, because there is no response.

Wells Fargo does claim that *Heer* is consistent with the purpose (though not the words) of section 614.14(5)(b), because “trusts are treated differently than other entities by Iowa law.” (Wells Fargo Br. 12). For example, a trustee must state that he or she is “authorized to transfer [the property], without any limitation or qualification whatsoever.” Iowa Code § 614.14(2). But that certification is not about whether the trust owns the property; it’s about whether the trustee is authorized to sell what the trust owns. The statute makes that clear, noting that “[i]f an interest in real estate is held of record by a trustee, a bona fide purchaser acquires all rights in the real estate which the *trustee and the beneficiary of the trust had.*” Iowa Code § 614.14(1) (emphasis added). *Id.* That is why the statute of limitations in section 614.14(5)(2) applies only to claims that arise “by reason of” the trustee deed. It’s focused on claims that go to the trustee’s authority, not on claims that arose because of a previous neighbor’s acquiescence.

If the legislature wanted a one-year limitations period for any claim that is brought more than one year after a sale by trustee deed, then it would have said

that. There would be no need to add the phrase “by reason of” to the statute. It is this causation element that *Heer* wrote out of the statute and that Wells Fargo has not and cannot prove. The Vaudts’ claims do not arise “by reason of” the trustee deed; they arise by reason of their previous neighbor’s actions over the last ten-plus years. There is no logical way to explain *Heer*’s holding, so it should be overruled.

As for the Vaudts’ second argument—that *Heer*’s holding and rationale do not apply to claims for adverse possession—Wells Fargo was completely silent. It said nothing on the point because, again, there is nothing to say. The district court was incorrect on this point, and regardless of what this Court does with *Heer*, the dismissal of the adverse-possession claim cannot stand.

Appellees have decided not to defend *Heer*’s reasoning or the district court’s extension of *Heer*’s holding to claims for adverse possession. The Vaudts respectfully request that the Court overrule its decision in *Heer*, reverse the district court’s dismissal, and remand this case for further proceedings.



Ryan G. Koopmans, AT0009366
KOOPMANS LAW GROUP LLC
500 East Court Ave., Suite 420
Des Moines, IA 50309
Telephone: (515) 978-1140
E-Mail: ryan@koopmansgroup.com
ATTORNEY FOR APPELLANTS

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 711 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