

No. 23-0482
Polk County No. EQCE087793

IN THE SUPREME COURT OF IOWA

DAVID A. VAUDT and JEANIE K. VAUDT,

Plaintiffs/Appellants,

vs.

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

Defendants/Appellees

*ON APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
ADRIA KESTER, DISTRICT COURT JUDGE*


FINAL BRIEF FOR APPELLEE WELLS FARGO BANK, N.A.

Scott A. Hall
CARNEY & APPLEBY, PLC
303 Locust St, Ste 400
Des Moines, IA 50309
PHONE: (515) 282-6803 FAX: (515) 282-4700
EMAIL: hall@carneyappleby.com

PROOF OF SERVICE & CERTIFICATE OF FILING

On August 21, 2023, I served this brief on all other parties by EDMS to their respective counsel, and I emailed a copy of this brief to appellant.

I further certify that I did file this brief with the Clerk of the Iowa Supreme Court by EDMS on August 21, 2023.



Scott A. Hall
CARNEY & APPLEBY, PLC
303 Locust St, Ste 400
Des Moines, IA 50309
PHONE: (515) 282-6803 FAX: (515) 282-4700
EMAIL: hall@carneyappleby.com

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	4
STATEMENT OF ISSUES PRESENTED FOR REVIEW	5
ROUTING STATEMENT	6
STATEMENT OF THE CASE.....	6
STATEMENT OF THE FACTS.....	8
ARGUMENT	9
I. APPELLANTS’ CLAIMS FOR BOUNDARY BY ACQUIESCENCE AND ADVERSE POSSESSION ARE TIME BARRED BY THE STATUTE OF LIMITATIONS FOUND IN THE PLAIN LANGUAGE AND MEANING OF IOWA CODE SECTION 614.14(5)(b).....	9
CONCLUSION.....	17
COST CERTIFICATE & CERTIFICATE OF COMPLIANCE	18

TABLE OF AUTHORITIES

Iowa Supreme Court

<i>Benskin, Inc. v. W. Bank</i> , 952 N.W.2d 292 (Iowa 2020).....	10
<i>Heer v. Thola</i> , 613 NW2d 658 (Iowa 2000).....	11, 12, 13, 14, 15
<i>Bank of Am., N.A. v. Schulte</i> , 843 N.W.2d 876 (Iowa 2014).	10

OTHER AUTHORITIES:

Iowa Code § 614.14(2)	12, 13
Iowa Code § 614.14(3)	12
Iowa Code § 614.14(5)(b).....	10, 11, 13, 16
Iowa R. App. P. 6.101(1)(b).....	10
Iowa R. App. P. 6.1101(3)(a)-(b).....	6

STATEMENT OF ISSUES

- I. APPELLANTS' CLAIMS FOR BOUNDARY BY ACQUIESCENCE AND ADVERSE POSSESSION ARE TIME BARRED BY THE STATUTE OF LIMITATIONS FOUND IN THE PLAIN LANGUAGE AND MEANING OF IOWA CODE SECTION 614.14(5)(b).

CASES

Benskin, Inc. v. W. Bank, 952 N.W.2d 292 (Iowa 2020)
Bank of Am., N.A. v. Schulte, 843 N.W.2d 876 (Iowa 2014)
Heer v. Thola, 613 NW2d 658 (Iowa 2000)

OTHER AUTHORITIES

Iowa R. App. P. 6.101(1)(b)
Iowa R. App. P. 6.1101(3)(a)-(b)
Iowa R. Civil P. 1.904(2)

ROUTING STATEMENT

Because this case presents issues that apply existing legal principles and that are appropriate for summary disposition, the Iowa Supreme Court should transfer jurisdiction to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a)-(b).

STATEMENT OF THE CASE

This appeal arises out of a quiet title action filed by Plaintiffs/Appellants David A. Vaudt and Jeanie K. Vaudt (hereinafter “Vaudts”) on June 27, 2022, against Defendants/Appellees, Fredesvindo Enamorado Diaz and Denice Enamorado, husband and wife (hereinafter “Enamorados”); “MERS” Mortgage Electronic Systems, Inc. solely as nominee for Lender and Lender’s successors and assigns, Fidelity Bank (later substituted with Appellee Wells Fargo Bank, N.A. as the real party in interest due to a mortgage assignment); Premier Credit Union; State of Iowa, Child Support Recovery Unit; and Delmy Bonilla (collectively referred to hereafter as “Defendants”) (App. 3-10).

On October 3, 2022, attorney Scott A. Hall filed a Pre-Answer Motion to Dismiss on behalf of Defendant Wells Fargo Bank, N.A.

(hereinafter “Wells Fargo”) (App. 13-17). The Vaudts filed a Resistance to the Motion to Dismiss on October 13, 2022 (App. 18-22). Wells Fargo filed a Reply to the Vaudts’ Resistance with attachments on October 17, 2022. (App. 23-27). The Vaudts filed a Supplemental Resistance to Wells Fargo’s Motion to Dismiss with attachments on December 8, 2022 (App. 48-92). The Vaudts and Enamorados also filed competing motions for summary judgment and accompanying documentation which all parties were forced to address and some of those documents are relevant to the matter before this court, specifically the publicly recorded documents. (App. 102-109). Wells Fargo filed a Reply to that Supplemental Resistance with attachments on December 19, 2022 (App. 110-133).

A hearing was held on December 19, 2022, the District Court entered its Order Granting the Motion for Dismissal on January 19, 2023. (App. 134-139).

On January 27, 2023, the Vaudts filed a Motion to Reconsider, Enlarge, or Amend the Order Dismissing Plaintiffs Petition (App. 140-148), and Wells Fargo filed a Resistance to that motion on

February 8, 2023 (App. 149-151), which the District Court denied on February 22, 2023. (App. 152-155). This appeal followed.

STATEMENT OF THE FACTS

The quiet title action was initiated by the Vaudts against their neighbors Fredesvindo Enamorado Diaz and Denice Enamorado (hereinafter the “Enamorados”) claiming a right, title, and interest in a disputed area of land bordering the Vaudt residence, which is legally described, in short, as “Lot 43 of Quail Park Plat 1” and encroaching on the Enamorados’ residence which is legally described, in short, as “Lot 44 of Quail Park Plat 1”, all found in West Des Moines, Polk County. (App. 4). The Vaudts claim their interest via Boundary by Acquiescence under Iowa Code section 650.14 and Adverse Possession. (App. 6-7).

The vesting deed conveying the homestead to the Enamorados was granted to “Fredesvindo Enamorado Diaz and Denice Enamorado, a married couple, as joint tenants with full rights of survivorship and not as tenants in common” by a **Trustee Warranty Deed** from grantors “Nicholas M. Cecere and Barbara A. Cecere, Co-Trustees, The Nicholas M. Cecere Revocable Trust

UAD March 3, 2016 and Nicholas M. Cecere and Barbara A. Cecere, Co-Trustee, The Barbara Cecere Revocable Trust UAD March 3, 2016” dated May 23, 2021, and filed of record on **June 3, 2021**, in Book 18567, Page 476, of the Polk County Recorder’s Office. (App. 13-14). Plaintiffs petition in this matter was filed **June 27, 2022**, more than one year after the Trustee Warranty Deed was filed with the Polk County Recorder’s Office. (App. 14) (emphasis added).

ARGUMENT

I. APPELLANTS’ CLAIMS FOR BOUNDARY BY ACQUIESCENCE AND ADVERSE POSSESSION ARE TIME BARRED BY THE STATUTE OF LIMITATIONS FOUND IN THE PLAIN LANGUAGE AND MEANING OF IOWA CODE SECTION 614.14(5)(b)

Error Preservation

Though competing Motions for Summary Judgment were filed by the Vaudts and the Enamorados, the ruling of the District Court was based upon Wells Fargo’s Motion to Dismiss based upon the date of the filing of the Trustee Warranty Deed, a public record with a filing date that was not disputed by any parties to the case submission at the District Court, and the date of the filing of the underlying Petition, again a fact undisputed by any parties to the

case submission at the District Court, so no challenges to the date of the filing of the Trustee Warranty Deed (June 3, 2021) or challenges to the date of the filing of the Petition in this matter (June 27, 2022) were preserved pursuant to Iowa Rule of Appellate Procedure 6.101(1)(b).

Standard of Review

The Court reviews rulings on motions to dismiss for correction of errors of law. *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020). Because this dispute raises an issue of statutory interpretation, the review is for correction of errors at law. *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014).

Analysis

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.**

Iowa Code § 614.14(5)(b) (2023) (emphasis added).

The Vaudts' requests for relief in the District Court action are "adverse claim(s)" and they have arisen "by reason of" the Trustee Warranty Deed conveying the disputed property to the Enamorados (which was filed of record on June 3, 2021) and the petition was not filed with the District Court until June 27, 2022 ("more than one year after the date of recording of the instrument from which such claim may arise"), therefore, under Iowa law, Plaintiffs' claims are forever barred by the statute of limitations shown in Iowa Code section 614.14(5)(b). *Heer v. Thola*, 613 NW2d 658 (Iowa 2000) (which was similarly dismissed due to the failure to file the claim within the one-year statute of limitations based on almost identical facts to the case at bar).

"Adverse claims" are defined by Iowa Code section 614.4(3) as those including "**a claim that a particular adverse person is the owner of or has an interest in the real estate**" so by its plain language, it clearly applies to all the claims made by Plaintiff in this lawsuit, specifically those of adverse possession. Iowa Code § 614.14(3) (2023) (emphasis added).

Trusts are treated differently than other entities by Iowa law, in part because they are legal fictions frequently used to hold and convey real estate as an estate planning tool without formal documentation filed with any governmental agency and frequently amended without public notice of the same. One of the ways trusts are treated differently is memorialized by Iowa Code section 614.14 which requires a Trustee to enter an affidavit into the public record upon which a bona fide third-party purchaser may rely upon in any conveyance of real property. Iowa Code § 614.14(2) (2023).

The Trustee's Affidavit states that the trustees "are authorized to transfer the interest in the real estate . . . free and clear of any adverse claims." *Id.* The Purchaser's Affidavit states that the Purchaser has "relied upon the Affidavit from . . . Trustees" and has "no notice or knowledge of any adverse claims arising out of the execution and recording of the deed from the trustee." *Id.* The Purchaser's Affidavit is "given to establish reliance on the [Trustee's] Affidavit . . . for all purposes contemplated under Iowa Codes Section 614.14." *Id.*

The claims filed by the Vaudts against the Enamorados arose out of the filing of the trustee's warranty deed granting title to the Enamorados as they purchased the land in good faith for their homestead.

The facts alleged in the case at bar, accepted as true for the purposes of the Motion to Dismiss, are nearly identical to the facts presented to the Court in *Heer v. Thola*, and therefore this case was rightfully dismissed by the District Court. *Heer v. Thola*, 613 NW2d 658, 659 (Iowa 2000).

In *Heer*, a father and his daughter divided a parcel of land for each of them to build a residence upon in 1973. *Id.* The daughter's home was built upon the land owned by her father in 1973 and a fence was erected at that time to divide the northern portion (for dad's future home) and the southern portion (where daughter's home was erected). *Id.* The southern portion of the land was deeded from father to daughter in 1974, and the father's residence was completed and occupied on the northern portion of the land in 1978, at which time the fence was removed. *Id.* In 1990 the father conveyed his homestead property into a revocable trust with him as

the original trustee and his daughter as the successor trustee. *Id.* The father's trust owned the northern property until it was conveyed by trustee's deed by his daughter, as successor trustee, to Robert Thola in 1994, and no boundary line was disputed in the years between 1973 and 1994. *Id.* In August 1997, after years of discussions between Robert Thola and the Heers about the location of the east-west boundary line separating their properties, Robert had a survey done and it was found that his recorded property line was approximately twenty-two feet south of the neighbors' understanding. *Id.* at 660. The Heers filed a petition to quiet title based on the boundary line they recognized since 1973, and the District Court and Court of Appeals ruled in the Heers' favor, but the Iowa Supreme Court reversed and dismissed the case based on the statute of limitations found in Iowa Code section 614.14(5)(b). *Id.*

Taking the facts alleged by the Vaudts in this case as true, they are nearly identical to the facts presented in *Heer v. Thola*. The Vaudts allege that they and their neighbors had recognized a boundary between them by actions for more than thirty years, yet

no discussions were ever had between them about the same. (App. 31, 38). After the Vaudts and Enamorados were each put on notice of a possible dispute of the location of the boundary line, the each had their own surveys done, similar to the Heers and Thola. (App. 107-109). Like the Heers and Thola, those retracement surveys confirmed that the originally recorded land survey lot lines were accurate, and that the alleged acquiesced boundary over the years was not accurate. *Id.* The Vaudts' retracement survey, was filed of record with the Polk County Recorder's office on January 19, 2022, in Book 18955, Page 342, and shows that the disputed boundary line, as surveyed, matches identically with the Enamorados' retracement survey filed July 22, 2021, in Book 18659, Page 899. *Id.* For your convenience that portion of the Vaudt retracement survey is shown here:

RETRACEMENT PLAT OF SURVEY

LEGAL DESCRIPTION

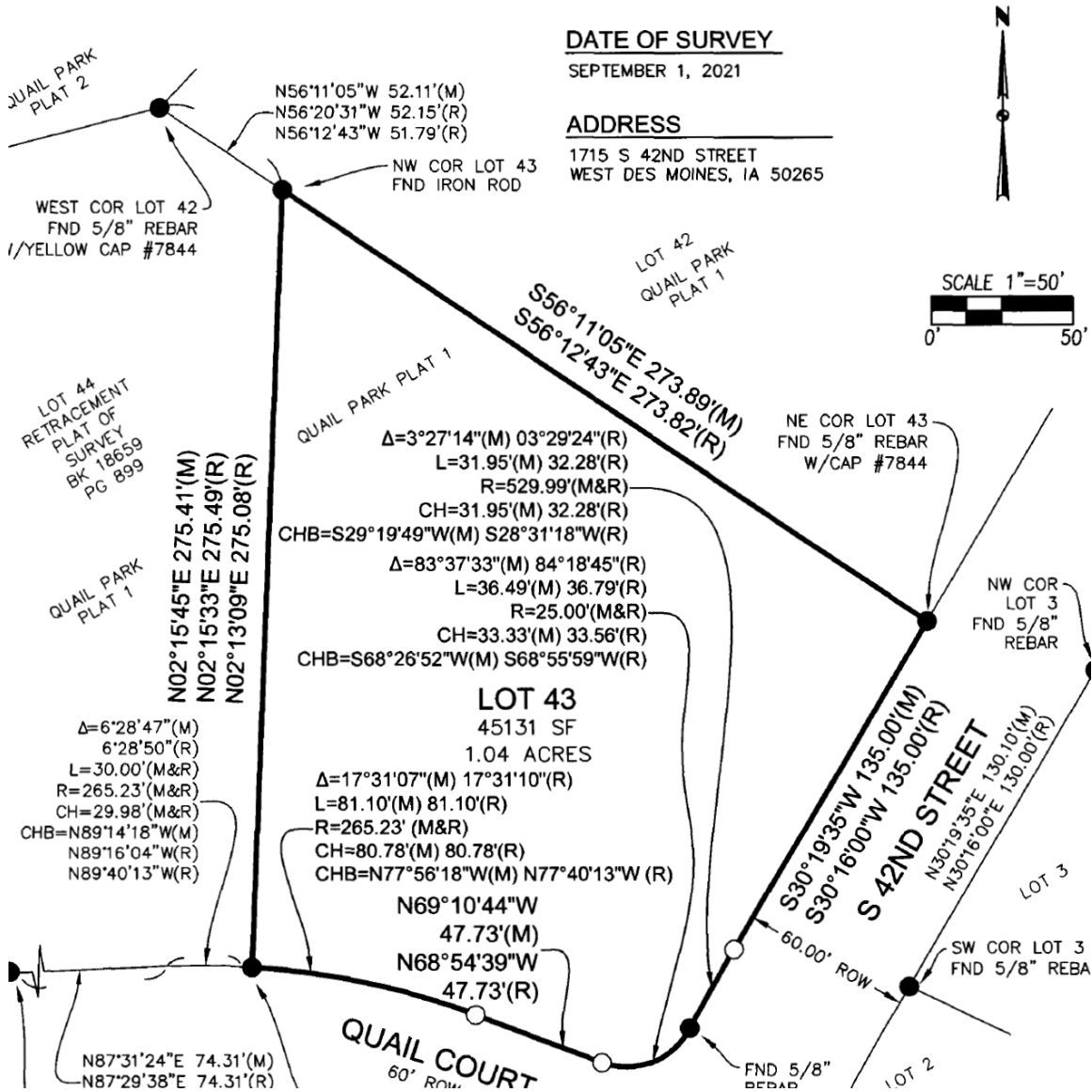
LOT 43, QUAIL PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

DATE OF SURVEY

SEPTEMBER 1, 2021

ADDRESS

1715 S 42ND STREET
WEST DES MOINES, IA 50265



Finally, both the Heers and the Vaudts filed their adverse claims against their neighbors beyond the time frame allowed by Iowa Code section 614.14(5)(b), and that is why these claims must fail.

The statutory regime found in section 614.14 of the Iowa Code was created by the Iowa legislature to ensure that bona fide third-party purchasers of real property in this state can rely upon the representations made by the trustee grantor's of that land that no adverse claims are lurking behind the shadows of the legal entity which they represent. To reverse the Supreme Court's holding in *Heer v. Thola*, and allow any claims adverse to the right and title granted by the Iowa trustee to that bona fide third-party purchaser to be filed beyond that one-year limitation, would be to render it a nullity and leave the purchaser exposed to collateral attack. It would weaken our land title system and it is contrary to the plain language of the statute.

CONCLUSION

For the reasons set forth above, the District Court's ruling must be affirmed.

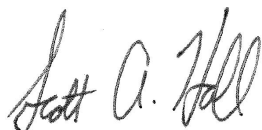
COST CERTIFICATE

I hereby certify that the costs of printing the Appellee's brief was \$0.00, and that that amount has been paid in full by me.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and the type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

this brief has been prepared in a proportionally spaced typeface using Century in 14 point and contains 2,523 words.



Scott A. Hall, AT0009988

Counsel of Record for Appellee Wells Fargo Bank, N.A.

CARNEY & APPLEBY, PLC

303 Locust St, Ste 400

Des Moines, IA 50309

PHONE: (515) 282-6803 FAX: (515) 282-4700

EMAIL: hall@carneyappleby.com