IN THE SUPREME COURT OF IOWA

NO. 23-0093

IOWA DISTRICT COURT
FOR WOODBURY COUNTY
CASE NO. ESPR055208

GARY DEAN JANSSEN and LARRY DALE JANSSEN, Plaintiffs-Plaintiffs-Appellants,

v.

THE SECURITY NATIONAL BANK OF SIOUX CITY, IA, as Executor of the Estate of Richard D. Janssen and SHERYL ANN COLLINS, Individually, Defendants-Appellees

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APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
HONORABLE JUDGE ZACHARY S. HINDMAN, PRESIDING

DEFENDANT-APPELLEE SHERYL ANN COLLINS FINAL BRIEF

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ROUTING STATEMENT

Pursuant to Iowa Rules of Appellate Procedure 6.903(2)(d) and 6.1101, Sheryl Ann Collins ("Collins") asks the Iowa Supreme Court to retain this appeal as it contains "substantial issues of first impression."

STATEMENT OF THE CASE

Collins adopts the Statement of the Case as outlined in The Security National Bank of Sioux City, Iowa's ("Bank") Brief.

STATEMENT OF THE FACTS

It is true that while this appeal involves a procedural and statutory review including its interpretation of a statute and Rule of Civil Procedure, the background of this matter is important to understand how this issue came before this Court. Collins adopts the Statement of the Facts as outlined in the Bank's Brief. The underlying matter before the second trial included many last-minute and untimely motion filings by the Plaintiffs, including less than a day before trial that drastically changed the course of trial, which appeared as meant to distract and obstruct Collins and Deb Shultz's ("Shultz")

preparation and trial strategy. The District Court referred to it as "procedural shenanigans" by Plaintiffs that "should not be rewarded when they must be taken into consideration as part of an inquiry into the equities of the case." (Appendix at 882.) The District Court went further in stating that "[i]n short, then, even if this Court must consider the equities of the case in deciding on a remedy, in the manner required under federal law, the Court still concludes a new trial is warranted." (*Id.* at 882-883.)

Additionally, Collins takes offense to the disputed statements of Plaintiffs in their Statement of Facts in their Brief regarding how the second trial occurred. The statements, while clearly irrelevant to the issues in this appeal, are only meant to distract this Court. Plaintiffs were found by the District Court to have directly misstated prior facts / historical events to the District Court in their post-trial motions. (Appendix at 968.) Collins will refrain from rehashing the events of the actual second trial as they are irrelevant to the issues in this appeal.

STANDARD OF REVIEW

The standard of review in regard to a District Court's granting of a Motion for New Trial is the abuse of discretion standard. *Elmore v. Woudenberg,* 728 N.W.2d 225 (Iowa App. 2006). The Supreme Court has consistently defined "abuse of discretion" as "an erroneous conclusion and

judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable and actual deductions to be drawn therefrom." *Glenn v. Farmland Foods, Inc.,* 344 N.W.2d 240, 243 (Iowa 1984).

Plaintiffs have a substantial burden that they cannot overcome in their appeal.

ARGUMENT

I. PLAINTIFFS FAILED TO COMPLY WITH I.C.A. § 633.312 & RULE 1.234

a. Preservation of Error

Collins contends that the argument of substantial compliance with the requirements of I.C.A. § 633.312 was a new argument in the Plaintiffs' Motion for Reconsideration. This issue of error was not preserved by Plaintiffs and should not be considered in this appeal.

b. I.C.A. § 633.312 was not complied with by Plaintiffs.

I.C.A. § 633.312 provides as follows,

> In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the

rules of civil procedure.[1]

Here, of rather strong importance, is that the requirement is that all interested parties, not plaintiffs in the matter, "***shall be joined with proponents as defendants.***"

This matter had two trials. The first, which was prosecuted by Plaintiffs' first counsel, included all of the interested parties in the matter. This appeal involves the second trial and Plaintiffs' new counsel, where Plaintiffs Dean Janssen ("Dean") and Jeff Janssen ("Jeff") dismissed themselves on May 28, 2021[2]. Then, at 12:51 p.m. (e-file time-stamped and not exactly when Collins and Shultz received the notification), the day before the second trial, Plaintiffs dismissed Shultz as a defendant.

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[1] I.C.A. § 633.312 requires more than just an interested / indispensable party being initially made part of a lawsuit. It requires an ongoing part of the lawsuit as "joinder" means "[t]he uniting of parties . . . in a single lawsuit." *Black's Law Dictionary,* (11th Ed. 2019). The concept of a "uniting" or unification as joinder as defined requires an ongoing as opposed to a temporary condition. The statute would make no sense in light of the second sentence, which requires ***the Court*** to bring in any other interested parties if an ongoing unification wasn't required. If a plaintiff dismisses an interested party, the second sentence of the statute plainly provides for an obligation of the Court to bring that party back to the case. § 633.312, as the Supreme Court has stated, is "the proper application of the indispensable party rule set forth in Iowa R. Civ. P. 1.234. And Iowa R. Civ. P. 1.234 requires not only the indispensable parties to an action be joined to that action, but that they remain joined for the duration of the action." (Appendix at 939.)

[2] Dean and Jeff Janssen were also interested / indispensable parties and should not have been dismissed from this case. They dismissed themselves in violation of I.C.A. § 633.312 and Rule 1.234

(Appendix at 792.) The second trial in this matter did not have all 6 of Richard Janssen's children, the interested parties required under I.C.A. § 633.312, and more importantly, Shultz, who had different rights under the 2018 Will in dispute than the prior Will, was not a party and had her rights adjudicated in the second trial without being able to defend herself.

Here, while Plaintiffs argue that all of the interested parties were part of the first trial, that does not excuse the failure to comply with I.C.A. § 633.312 during the second trial. In fact, the statute is clear in its use of ***"shall be joined as defendants."***[3] The District Court, in its May 19, 2022 Ruling, addressed the issue of Shultz, a sister of Plaintiffs, and Dean and Jeff, being a interested and indispensable parties who were required under I.C.A. § 633.312 to remain as defendants through the entirety of trial. The District Court, in its Ruling, made clear that Shultz was indeed an indispensable party, did not waive her requirement to be at trial, was prejudiced by it, and that a new trial was required under the statute.

As the District Court held, I.C.A. § 633.312 was plainly implicated in

[3] Shall: "as used in statutes, contracts, or the like, this word in generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term 'shall' is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means 'must' and is inconsistent with a concept of discretion." (Black's Law Dictionary, 6th Edition 1990.)

this matter. While the Probate Code does not define the term "interested parties," the Supreme Court has held that "interested parties" as used in the Probate Code means "one whose 'interests are directly affected by a diminution of the [estate] assets." *In Re Estate of Boyd,* 634 N.W.2d 630, 638-39 (Iowa 2001). The Court of Appeals also provided the same in *Classon v. Classon,* 786 N.W.2d 873 (Table), 2010 WL 2383432, *4, n.3 (Iowa App. 2010)("We believe that for purposes of section 633.308 an 'interested person' similarly includes any person whose interest in assets may be diminished, but also includes any person whose interest in assets may be increased.").[4] Dean and Jeff are also interested parties in that they certainly have an interest in making sure their father's Will is properly submitted to the probate court, but Shultz has a clear interest in the 2018 Will as she takes differently in it than prior wills. (Appendix at 882.)

The District Court also looked at the requirements of I.C.A. § 633.312 in that all interested parties be joined as defendants and concluded the interested parties are indispensable parties to a resolution of Richard Janssen's Will contest. The District Court went on to note that the word "shall" in the statute connoted a general duty while citing *In Re Detention*

[4] Here, Shultz had a financial interest in whether Richard Janssen's 2018 Will was upheld. She was an interested party and a right to make her case as a party under I.C.A. § 633.312.

of Fowler, 784 N.W.2d 184, 187 (Iowa 2010). (Appendix at 853-854.) It was further noted that the failure to include all interested parties in a will contest injures the rights of a person or the public. (Appendix at 854.) Furthermore, I.C.A. § 633.312 applies a duty on the District Court that when interested parties become known, ***"the court shall order them brought in as party defendants."*** The motion to dismiss Shultz required the District Court's consent under Iowa. R. Civ. Pro. 1.943. The District Court dismissed Shultz contrary to the requirements of I.C.A. § 633.312[5]. As the District Court found, "§ 633.312 effectively renders all "interested parties" indispensable parties in will contest actions" citing *In re Ditz' Estate,* 125 N.W.2d 814, 818 (Iowa 1964). On top of that, the District Court held that Shultz was an indispensable party on top of being an interested party. Shultz was found to be an indispensable party under both types of indispensable parties being 1) "a party whose 'interest is not severable, and [whose] absence will prevent the court from rendering any judgment between the parties before it'"; and 2) "a party whose 'interest would necessarily be inequitably affected by a judgment rendered between those before the

[5] The District Court correctly noted that the prejudice to Shultz if the verdict was allowed to stand "would be the result of the Court, through its entry of judgment on the verdict, adjudicating Debra's rights, despite her absence." (Appendix at 951.) The District Court had a duty under § 633.312 to join Shultz and not dismiss her.

court,' notwithstanding the party's absence from the case." (Appendix at 855.) The District Court, in finding Shultz met both types of indispensable parties, relied upon the Supreme Court in *Sear v. Clayton Cnty. Zoning Bd.,* 590 N.W.2d 512, 517 (Iowa 1999). The Court also found that Jeff and Dean Janssen were interested and indispensable parties.

The District Court correctly noted that Shultz's interest in the case was not severable and her absence "prevents the Court from rendering a judgment between the parties who remain in this case." (Appendix at 855.) If the will contest in this case is found in Plaintiffs' favor, it would have the effect of making sure the "will is invalid [and] has the effect of invalidating the will in toto and as to everyone interested therein." *In Re Ditz' Estate,* 125 N.W.2d at 818. Shultz's interests are not severable in this case. *Cf. e.g. Continental Western Ins. Co. v. Morrison Freight Lines, Inc.,* 2006 WL 8452783, *2 (N.D. Ind. 2006) (Providing the proposition that persons "have severable interests under" the federal indispensable-party rule when they "have interests that can be independently addressed without affecting the interests of either party.") Shultz was an indispensable party under Iowa R. Civ. P. 1.234, and her rights were affected by the second trial without affording her the statutory right to defend her own interests. *Brown v. Kay,* 889 F.Supp.2d 468 (S.D. N.Y. 2012) (The absence of a devisee under a

challenged will "prevented the court from according complete relief among the existing parties")[6]. The Supreme Court held the same when it stated that a person's "rights cannot be adjudicated unless [the person] is made a party to the action" where the rights being sought are adjudicated. *Francksen v. Miller,* 297 N.W.2d 375, 378 (Iowa 1980). As a result, the District Court was prevented from rendering any judgment between the Plaintiffs and Collins because of Shultz's absence both under Iowa R. Civ. P. 1.234 and I.C.A. § 633.312.[7]

Moreover, Shultz & Collins were found to not have waived the application of I.C.A. § 633.312 with the last-minute consent of dismissal at the Pretrial Hearing that occurred immediately before voir dire. (Appendix

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[6]Plaintiffs also moved the District Court in limine to prevent Collins from informing the jury that Shultz was previously a party. While Plaintiffs tried to argue otherwise in their Motion to Reconsider when they claimed that their dismissal of Shultz "was expressly limited to 'claims made against' her", the District Court pointed out that was not even close to reality. (Appendix at 968.) That move by Plaintiffs substantiates that Shultz was not only an indispensable party but an interested party. Not only did Plaintiffs dismiss Shultz, but they also filed and were granted specific motions precluding Shultz from mentioning that she was previously a party and she was sequestered from trial! (Appendix at 1091-1100 & 968.)

[7] The District Court also noted in its May 19, 2022 Order Re: Post-Trial Motions that the issue of partial validity of the will shows that Shultz was prejudiced from her exclusion at trial because she could have still received under the 2018 Will even if Collins had been found to have unduly influenced Richard Janssen. (Appendix at 967.) *See, In Re Estate of Kremer,* 845 N.W.2d 70, 74-76 (Iowa App. 2014)(Discussing the doctrine of partial validity).

at 1112-1113 & 1115-1116.) In fact, the issue of an indispensable party "may be raised for the first time on appeal, and that when a valid indispensable party issue is so raised, the proper disposition of the appeal is reversal of the underlying judgment or decree, and remand to the trial court with directions to allow the plaintiff to bring in the missing indispensable party." *See, Ditch v. Hess,* 2112 N.W.2d 442, 449-50 (Iowa 1973). The Supreme Court in *Ditch* noted that the decree in that case would affect subservient landowners who were not parties in the lawsuit thus they needed to be in the lawsuit. As such, the Supreme Court held them to be indispensable parties while also finding the issue of indispensable parties may be raised on appeal for the first time. *Ditch*, 2112 N.W.2d at 449-50.

The Court of Appeals also held in an unpublished opinion, *Rice v. Seventeen Twenty Associates,* 2000 WL 278752 (Iowa App.)(March 15, 2000), that a defendant in a declaratory judgment action dealing with the issue of a parking lot easement could, for the first time on appeal, argue that the owner of a neighboring lot who was not a party was an indispensable party requiring reversal of summary judgment. The *Rice* Court agreed and remanded the case back to the District Court to add the indispensable parties. At the very least, the fact that the absence of an indispensable party may be raised the first time on appeal shows that the issue is non-waivable.

The *Rice* Court even noted that the appellee's argument that the appellant in that case "waited in the weeds" to raise the issue is further evidence that a party has no duty to report the issue before the District Court to preserve it. *See also Florida Land Rock Phosphate Co. v. Anderson,* 39 So. 392-396 (Fla. 1905)(A case involving a plaintiff naming defendants, then dismissing some of them before trial, had the Florida Supreme Court *sua sponte* raise the question whether the dismissed defendants were indispensable parties. The Florida Supreme Court found that they were, reversed the decree, and required adding the missing indispensable parties.) It is important to note the Florida Supreme Court raised the issue of dismissal of indispensable parties as required to be in the trial, *sua sponte,* which also shows it is an issue that cannot be waived. The appellate courts of Iowa, including the Supreme Court, have indicated that they have a duty to raise the issue of an indispensable party *sua sponte* when the issue is apparent from the record. *See e.g. Tod v. Crisman,* 99 N.W. 686, 689 (Iowa 1971); *see also Vogelaar v. Polk County Zoning Bd. Of Adjustment,* 188 N.W.2d 860, 861 (Iowa 1971)(The Supreme Court noted that the District Court ordered an indispensable party brought into the case on its own); *see also* Iowa R. Civ. Pro. 1.243(3)("If an indispensable party is not before the court it shall order

the party brought in.")[8]

There is also federal authority that provides that under circumstances as in this case, the rights of and inclusion of an indispensable party cannot be waived. As Wright and Miller state,

> Although Rule 12(h)(2) only preserves the right to raise a Rule 19 defense through the trial on the merits, the absence of a required party is considered to be so significant a defect that most courts have indicated that it may be raised for the first time subsequent to the trial or on appeal. Any party may bring the issue to the court's attention, and both the trial court and the appellate court may take note of the nonjoinder sua sponte . . . Of course, when the issue is raised after the trial has concluded, considerations of judicial economy and fairness dictate that the court closely examine the merits of any assertion of nonjoinder to be certain that it really will have prejudicial effects.
>
> In considering what action an appellate court should take when it is urged to vacate the proceedings below and to dismiss for want of a required party, three situations must be distinguished. (1) The judgment and purports to affect prejudicially the interest of an absent required party, and the objection is raised for the first time on appeal. (2) the objection is raised for the first time on appeal, but the result on the merits is such that the absent party is not even purportedly prejudiced. (3) The objection is presented unsuccessfully from the beginning, but the result on the merits is such that the absent party is not threatened with prejudice.
>
> In situation (1), *the action must be dismissed or remanded to bring in the absent persons or remanded to reshape the judgment to protect them.* This is the classic illustration of the rule that the objection of failure to join an indispensable party may be raised for the first time

[8] The District Court correctly noted that Plaintiffs are seeking a back-door default judgment against Shultz and the other interested and indispensable parties, which mechanism does not exist under Iowa Law or Rules of Civil Procedure. (Appendix at 867.)

> on appeal.
>
> . . .
>
> The results in these situations must be considered in terms of the purposes of the compulsory-joinder rule. Rule 19 is intended to protect the absentee from prejudice, to protect those made parties from harassment by successive suits, and to protect the courts from being imposed upon by multiple litigation. For the first of these purposes, timely objection of the parties is immaterial. If the absentee otherwise will suffer prejudice, the court *must* act on its own initiative to protect the absentee, and this is why the appellate court must reverse or reshape the judgment in situation (1).

7 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedures* § 1609 (3d ed. April 2022 update)(emphasis added). Shultz, and this matter, clearly falls within situation 1 stated above, which required the District Court to take action to protect Shultz. *See Provident Tradesmens,* 390 U.S. at 102, 110 (Supreme Court 1968)("[T]here is the interest of the outsider whom it would have been desirable to join. *Of course, since the outsider is not before the court, [she] cannot be bound by the judgment rendered."*)(emphasis added). And the 2018 Will provides Shultz with items not in the prior will, as the District Court noted, which means there is a direct impact upon her and not an indirect one. (Appendix at 870.) *see In Re Ditz' Estate,* 125 N.W.2d at 818. This case should have had Shultz in it as it also,

> implicates another purpose of the compulsory joinder rules – preservation of the prohibition of the direct adjudication of an absent party's rights and interests, which adjudication the court has no authority to render. *Cf., e.g.,* 7 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1621 (3d.

> ed. April 2022 update)("Insofar as a cotenant seeks only to adjudicate his own interest in land, the other cotenants need not be joined . . . But when all cotenants will be affected by the judgment . . all cotenants must be joined." a*ccord Mallow v. Hinde,* 25 U.S. 193 (1827)(describing the indispensable party rule as based in part on the principle that 'no Court can adjudicate directly upon a person's right, without the party being either actually or constructively before the Court.").

(Appendix at 870-871.) Shultz's indispensable / interested party status cannot be waived.

Finally, Shultz didn't waive any interested / indispensable party status. "[W]aiver is the voluntary or intentional relinquishment of a known right." *In Re Estate of Laude,* NO. 20-1399, 2022 WL at *6, (Iowa App. 2022)(quoting *Scheetz v. IMT Ins. Co.,* 324 N.W.2d 302, 304 (Iowa 1982). Plaintiffs have the duty to show that Shultz waived her interested / indispensable party status. *In Re Estate of Warrington,* 686 N.W.2d 198, 202 (Iowa 2004). Here, Shultz resisted a motion in limine requesting that she not be permitted to tell the jury in testimony that she was a defendant and avoid the sequestration order. (Appendix at 1091-1100.) She was also handcuffed on being able to testify as she would as a party. (*Id.*) The other circumstances including the District Court signing off on the dismissal, when it shouldn't have, and the dramatic flare of last minute (and untimely) filings by Plaintiffs left little time to consider implications especially because the motion to

dismiss was one of many filings from Plaintiffs on the eve of trial. Voir dire was started right after this issue was decided and the jury had to come in. (Appendix at 1112-1113 & 1115-1116.) Less than 30 minutes before trial this issue was being discussed and decided. Shultz simply did not knowingly and voluntarily waive her rights as an interested / indispensable party.

I.C.A. § 633.312 and Iowa R. Civ. P. 1.234 were not complied with and required Shultz to be a party at trial.[9] As a result, the District Court ruling should be upheld and this appeal dismissed.

[9] There was also no substantial compliance with § 633.312 and Iowa R. Civ. P. 1.234 as continued joinder is mandatory under the statute and rule. "[T]he continued-joinder requirement arises from the only fair and reasonable reading of the plain statutory language. And so that requirement is thus, as the Court explained on pages 7-8 of its ruling, mandatory and not directory. *See also* 59 Am.Jur. 2nd Parties § 119("'The statutes and rules in many states declare that . . . when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in. Such statutes and rules have been interpreted as declaratory of the rights of all the parties cannot be made without making other persons parties, it becomes the imperative duty of the court to make the necessary order to bring them in *so that their rights may be adjudicated,* notwithstanding that no objection to their absence has been raised by demurrer or answer, and no application for their joinder has been made.'(emphasis added)".(Appendix at 940-941.)

II. THE DISTRICT COURT DID NOT RETAIN AUTHORITY TO HEAR THE CASE IN THE ABSENCE OF STRICT COMPLIANCE WITH I.C.A. § 633.312.

a. Preservation of Error

Collins, for the sake of brevity, joins in the argument of the Bank in regard to the issue of preservation of error in regard to this issue argued by Plaintiffs. The issue of subject matter jurisdiction was never argued to the District Court in any post-trial motion, including the motion to reconsider. Plaintiffs failed to preserve this issue in the underlying District Court matter. As is well-settled law, a "party fails to preserve error on new arguments or theories raised for the first time in a [post-trial] motion." *Turner v. CCRC of Cedar Rapids, LLC,* No. 20-1210, 2021 WL 3075713 *2 (Iowa App. July 21, 2021). New issues cannot be raised for the first time in an appeal. *Estate of Strong,* 791 N.W.2d 427 (Iowa App. 2010).

b. District Court Did Not Retain Authority to Hear the Case.

Plaintiffs also argue to this Court that the District Court always retained subject matter jurisdiction, along with argument that the failure to comply with I.C.A. § 633.312 "does not deprive the district court of subject matter jurisdiction to hear the will contest." (Appellant's Brief, pg. 20.) While this was raised for the first time on appeal, never allowing the District Court to address this issue, the District Court noted that an indispensable

party cannot be deemed to have waived its presence even if consented to because the indispensable party argument can be raised at any time even on appeal. Apparently finding the strength of the District Court's ruling they now appeal, it appears that Plaintiffs have morphed their waiver argument into a waiver of subject matter jurisdiction argument.

As noted earlier in this Brief and by the District Court, the issues of indispensable and interested parties cannot be waived and can be raised at any time. Additionally, Shultz was required to be a party in the lawsuit to protect her real, and not imaginary, interests under the 2018 Will. Because Shultz was not a party to the lawsuit, her rights were not completely or even adequately protected at trial. Plus, the Motion for Partial Invalidity raised more important questions as to why Shultz was an interested and indispensable party.

This argument of Plaintiffs is perplexing in that it cannot be that the District Court had subject matter jurisdiction to complete the will contest when an interested and indispensable party was not a party and also prohibited, at the motion of Plaintiffs, to not even be able to mention she had been a party to the jury or completely attend the trial. Plaintiffs went out of their way to prohibit both Collins and Shultz from testifying that Shultz was previously a party in the lawsuit. With Shultz an indispensable and interested

party, the District Court cannot issue judgment or a decree without her participation and being a named party. Plaintiffs conduct shows Shultz's rights were prejudiced because Shultz was not provided a defense, could not argue partial validity of the 2018 Will, and was even sequestered as a witness! (Appendix at 1091-1100.)

Even so, whether this Court had subject matter jurisdiction or not, Shultz, Dean & Jeff Janssen were interested and indispensable parties who were supposed to be at trial as defendants under both § 633.312 and Rule 1.234. Shultz was also directly impacted and prejudiced without her presence as a party at trial. As a result, this appeal should be denied and this case remanded back to the District Court.

CONCLUSION

I.C.A. § 633.312 and Iowa R. Civ. P. 1.234 were not complied with and Shultz (in addition to Dean and Jeff Janssen) was required to be a party at the second trial. As such, a new trial is warranted where Shultz can put on a defense, have jury instructions crafted in her favor (including a discussion of partial validity of the will), and be present for the entire trial instead of being sequestered like she was. Additionally, as outlined by the District Court, there was no substantial compliance with § 633.312 and Iowa R. Civ. P. 1.234. As such, the appeal should be denied and this case remanded back to the District

Court for scheduling of a trial. Moreover, the District Court did not have subject matter jurisdiction to hear the second trial as Shultz was not a party. And this issue of subject matter jurisdiction was not properly preserved for appeal. As a result, this appeal should be denied and this case remanded back to the District Court for scheduling of a trial.

CERTIFICATE OF COMPLIANCE

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

[x] this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font size and contains 4,678 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

/s/ Ryland Deinert September 26, 2023

CERTIFICATE OF SERVICE

I, Ryland Deinert, hereby certify that on the 26th day of September, 2023, I served Sheryl Ann Collins's Proof Brief on all other parties to this appeal by emailing one copy thereof to the following counsel for the parties at the following addresses:

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CERTIFICATE OF FILING

I, Ryland Deinert, further certify that I filed Sheryl Ann Collins's Proof Brief via EDMS on the 26th day of September, 2023.

/s/ Ryland Deinert

CERTIFICATE OF COST

It is certified that the actual cost paid by Sheryl Ann Collins for submitting this brief was $0.00 as it was filed electronically by EDMS.