

IN THE SUPREME COURT OF IOWA

NO. 23-1131

ELIZABETH ROBERTS,

Plaintiff & Counterclaim Defendant/Appellant,

vs.

ERIC ROBERTS, as trustee of the W. DAVID ROBERTS
REVOCABLE TRUST, DAVE ROBERTS GROWTH AND
VENTURES, INC. & ERIC ROBERTS as personal
representative of the ESTATE OF WILLIAM DAVID
ROBERTS,

Defendant & Counterclaim Plaintiff/Appellee,

PLAINTIFF-APPELLANT FINAL BRIEF

APPEAL FROM THE IOWA DISTRICT COURT IN AND
FOR POTTAWATTAMIE COUNTY
THE HONORABLE CRAIG DREISMEIER

RESPECTFULLY SUBMITTED,

/s/ Jordan T. Glaser

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER “PARTIAL REVOCATIONS” OR AMENDMENTS OF PREMARITAL AGREEMENTS ARE ALLOWED BY IOWA CODE SECTION 596.7

IOWA CODE § 596.7 (2022)

In re Marriage of Erpelding, 917 N.W.2d 235 (Iowa 2018)

Meinders v. Dunkerston Cmty. Sch. Dist., 645 N.W.2d 632 (Iowa 2002)

Hansen v. Hansen, No. 17-0889, 2018 Iowa App. LEXIS 921 (Iowa Ct. App. Oct.
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II. WHETHER OR NOT THE PURPORTED PARTIAL REVOCATION OF A PREMARITAL AGREEMENT MEETS BASIC CONTRACTUAL PRINCIPLES

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III. WHETHER THE PURPORTED PARTIAL REVOCATION IS UNCONSCIONABLE AND VIOLATES PUBLIC POLICY

Bartlett Grain Co. v. Sheeder, 829 N.W.2d 18 (Iowa 2013)

Norris v. Norris, 174 N.W.2d 368 (Iowa 1970)

IV. WHETHER OR NOT THE DISTRICT COURT SHOULD HAVE ENTERED JUDGMENT AS A MATTER OF LAW AS TO DEFENDANT/APPELLEE’S COUNTERCLAIMS

Ferris v. Barrett, 95 N.W.2d 527 (Iowa 1959)

Peak v. Adams, 799 N.W.2d 535 Iowa 2011)

ROUTING STATEMENT

This appeal should remain with the Iowa Supreme Court as it involves important, novel issues related to the interpretation of Iowa Code Section 596.7 and whether “partial revocations” or amendments are permitted by that code section or any other provision of Iowa law. This appeal also involves important, essential issues related to premarital agreements and marital relationships in Iowa.

STATEMENT OF THE CASE

W. David Roberts (“David”) died on April 2, 2022 at the age of eighty-three. His son Eric Roberts (“Eric”), his nominated executor and sole heir, filed his Petition for Probate on April 25, 2022 in Shelby County Case No. ESPR014393. On April 26, 2022 the Shelby County District Court issued letters of appointment to Eric.

On June 30, 2022 Elizabeth Roberts (Elizabeth), David’s surviving spouse, filed her Motion to Enforce Antenuptial Agreement or Election of Surviving Spouse for Elective Share. On July 20, 2022 Elizabeth filed a Petition for Declaratory Judgment in Shelby County Case No. EQCV020496 naming Eric Roberts, as trustee of the W. David Roberts Revocable Trust, Dave Roberts Growth and Ventures, Inc. & Eric Roberts, as personal representative of the Estate of William David Roberts as Defendants in that matter.

In addition to filing her suit in EQCV020496 on July 20, 2022, on that same day Elizabeth filed a motion to consolidate ESPR0143393 and EQCV020496 and to specifically assign Judge Craig Dreisemeier to both cases. An order to consolidate was entered by Judge Dreisemeier on August 8, 2023. That order directed that all further pleadings related to both cases would be filed in ESPR014393.

On September 27, 2022, Elizabeth filed a Motion for Summary Judgment (“MSJ1”), her primary argument being that the purported partial revocation executed in 2017 is not authorized by Section 596.7. On September 30, 2022, Eric’s attorneys filed their Answer to Elizabeth’s petition for declaratory judgment and further filed their own counterclaims, alleging that in the event Elizabeth was successful in enforcing the original premarital agreement Eric sought restitution for supposed “unjust enrichment” Elizabeth had received during the marriage.

Elizabeth filed an additional motion for summary judgment (“MSJ2”) on March 14, 2023, seeking to have Eric’s counterclaims dismissed. Eric filed his briefs in resistance to both MSJ1 and MSJ2 on April 14, 2023. Elizabeth then filed her Reply Brief on April 21, 2023. The court set both MSJ1 and MSJ2 for hearing on April 24, 2023; although ultimately that hearing took place on May 30, 2023, pursuant to a May 5, 2023 Order entered by the court and was transcribed. On July 12, 2023, Judge Dreisemeier entered his order ruling on Elizabeth’s MSJ1 and

MSJ2. The court found that the 2017 purported partial revocation was valid and enforceable, entered judgment against Elizabeth, and ruled that Eric's counterclaims were moot due to judgment being entered against Elizabeth.

On July 13, 2023 Elizabeth sought to clarify with the court that the July 12, 2023 order was, in fact, a final order and the court confirmed that it was a final order in an additional order entered on July 14, 2023. Elizabeth then filed her Notice of Appeal with the Shelby County District Court on July 14, 2023.

STATEMENT OF THE FACTS

Elizabeth and David were married on April 1, 1993, in the state of Iowa. One day after their twenty-nine-year anniversary, David passed away on April 2, 2022. Eric is David's sole heir pursuant to David's estate plan and, if the trial court's order stands, would inherit approximately \$16,000,000. *See* Inventory Report filed January 24, 2023. Elizabeth is David's surviving spouse. David accumulated most of his wealth in the form of Southwest Iowa real estate holdings. *Id.* Prior to their marriage in 1993, David and Elizabeth signed the "Antenuptial Contract" in March of 1993. It has 12 total paragraphs, but it has two essential paragraphs to understanding this entire case: paragraphs 4 and 8.

Paragraph 4 prohibits either spouse from seeking "claims of any kind against the estate of the other for any reason or by way of any right as the surviving spouse of such decedent for dower, statutory right, election . . . and the Parties hereto do

hereby waive any claim they might have for any such right or any claim of every kind or character, except as specifically provided in paragraph 8 hereafter.” (App. 9-17).

Paragraph 8 states in pertinent part, “It is further agreed that in the event the marriage between the parties hereto is terminated by death of either of the parties hereto, the survivor of the parties shall receive one-third of ALL (net equity in) real property of the deceased.” (App. 9-17). All the parties hereto agree that the Antenuptial Contract is valid and enforceable. *See generally* the pleadings filed in this matter.

In December of 2017, David and Elizabeth signed the purported “Partial Revocation of Antenuptial Contract” (hereinafter “Purported Partial Revocation”). This document claims to “revoke” paragraph 8 of the Antenuptial Contract as being “inconsistent with the desires of Dave and Elizabeth and is inconsistent with their conduct as separate waivers of downer interests have previously been executed and recorded.” (App. 54).

Elizabeth was not aware at the time she signed the Purported Partial Revocation that David had not included her in his estate plan. (App. 42-43). Elizabeth did not understand what the Purported Partial Revocation sought to accomplish when she signed it. (App. 42). She had a very brief interaction with David and then signed the document the following day. (App. 166-167). David told

Elizabeth, “We need to make sure that everything stays out of probate, and that signing this would make sure that happened and the family would be taken care of.” (App. 166-167).

Elizabeth belatedly realized that the Purported Partial Revocation only benefited Eric and not her or her family. (App. 208). Unfortunately for Elizabeth, the Purported Partial Revocation did not “take care of her”, and this scheme was by design as can be seen in the September 1, 2016 letter attorney Jack Ruesch sent to his client David. (App. 56-57). In that letter, Ruesch alerts David to the problems posed by the Antenuptial Contract by writing: “Your situation is somewhat complicated by the antenuptial agreement because that says that regardless of the waiver of an elective share, as provided in the antenuptial agreement, the surviving spouse is nevertheless entitled to a one-third interest in all real estate. Consequently, even with this waiver under the antenuptial agreement, she would be entitled to a one-third interest in the property.” (App. 56).

Over a year later, Ruesch and David had found what they believed to be the solution to David’s problem of how he would cut his spouse of almost thirty years out of his estate plan and instead transfer all of his wealth to Eric: the Purported Partial Revocation. (App. 54-57; 286-288). Ruesch exclusively spoke to David in relation to the Purported Partial Revocation and the alleged “separate agreements” referenced in his affidavit and attached thereto. (App. 56-57; 286-288).

ARGUMENT

I. PRESERVATION OF ERROR

All matters at issue in this appeal were timely appealed and properly preserved.

II. STANDARD AND SCOPE OF REVIEW

A court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In other words, summary judgment is appropriate if the record reveals a conflict only concerns the legal consequences of undisputed facts. When reviewing a court's decision to grant summary judgment, we examine the record in the light most favorable to the nonmoving party and we draw all legitimate inferences the evidence bears in order to establish the existence of questions of fact. *Jones v. Univ of Iowa*, 836 N.W.2d 127, 139-40 (Iowa 2013).

The party resisting a motion for summary judgment “must set forth specific facts showing that a genuine factual issue exists.” *Huber v. Hovey*, 501 N.W.2d 53, 55 (Iowa 1993). The district court’s rulings will be reviewed de novo pursuant to Iowa Rule of Appellate Procedure 6.907. “Summary judgment is not a dress rehearsal or practice run, it is the put up or shut up moment in a lawsuit, when a

[non-moving] party must show what evidence it has that would convince a trier of fact to accept its version of events.” *Nelson v. Lindaman*, 967 N.W.2d 1, 11 (Iowa 2015).

III. THE TRIAL COURT ERRONEOUSLY HELD THAT THE PURPORTED PARTIAL REVOCATION IS AUTHORIZED BY IOWA LAW

A. Partial Revocations and amendments are not authorized by Iowa Code Section 596.7

- i. The plain language of Section 596.7 demonstrates that
“partial” revocations and amendments are not
permitted.**

Iowa Code section 596.7 states in pertinent part: “[a]fter marriage, a premarital agreement may be revoked only as follows: 1. By a written agreement signed by both spouses. The revocation is enforceable without consideration.” IOWA CODE § 596.7(1) (2022). Iowa Code section 596 applies to all premarital agreements executed on or after January 1, 1992, so section 596 governs the Antenuptial Contract and the Purported Partial Revocation. The word “partial” or “amend” appears nowhere in this code section. “Legislative intent is expressed by omission as well as inclusion, and the express mention of one thing implies the exclusion of others not so mentioned. *Meinders v. Dunkerston Cmty. Sch. Dist.*,

645 N.W.2d 632, 637 (Iowa 2002). As the Iowa Court of Appeals noted in *Hansen v. Hansen*, “clearly the legislature chose to omit the right to amend a premarital agreement and we don’t search for meaning beyond the statute’s express terms.” No. 17-0889, Iowa App. LEXIS 921, at *11 (Iowa Ct. App. Oct. 10, 2018). It defies all common sense and principles of statutory interpretation to read words into the statute that the legislature deliberately left out when enacting Section 596.

Merriam-Webster defines “revoke” as a transitive verb that means “to annul or take back: rescind.” *Revoke*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/revoke>. (last visited Aug. 25, 2023). In other words, two parties revoking an agreement would be returned to their status as if the agreement had never occurred. Merriam-Webster defines amend to mean “to alter formally by modification, deletion, or addition.” *Amend*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/amend>. (last visited Aug. 25, 2023). The plain meaning of the words in Section 596.7 precludes partial revocations or amendments.

Further, a “partial revocation” by any other name is simply an amendment. Mr. Ruesch and David likely styled the 2017 document as a “partial revocation” due to section 596.7’s use of the word revocation. But what we have here in the Purported Partial Revocation is an attempt to amend the Antenuptial Contract, meaning David’s purpose was to leave the Antenuptial contract in place but in an

altered state more favorable to his interests. The Purported Partial revocation seeks to amend and alter the Antenuptial Contract through the deletion of two paragraphs, an action prohibited by section 596.7.

- ii. **The Iowa Legislature has already explored the possibility of authorizing partial revocations and amendments and declined to do so.**

As Justice Mullins stated in dissent in *Hansen*, “[w]e have all agreed the legislature did not authorize amending prenuptial agreements during marriage.” *Id.* at *58. If the express, unambiguous terms of the statute do not convince us and Iowa case law is directly on point, we can look at the legislative history of section 596.7 for unassailable evidence that amendments and partial revocations are not and have never been authorized by section 596.7. In 2010 and 2013 the Iowa Legislature considered amending section 596.7 to authorize partial revocations and amendments. *See* H.R. 2234, 83rd Leg., 2nd Sess. (Iowa 2010); S.S.B. 1196, 85th Leg., 1st Sess. (Iowa 2013).

H.R. 2234 sought to change each reference to a “premarital agreement” in our current code to, instead, “marital agreement.” This makes sense if Legislature seeks to authorize not only premarital agreements but also agreements executed during the marriage. Moreover, H.R. 2234 would have amended section 596.7 from a section exclusively about revocations to one titled “Revocation AND

AMENDMENT.” The very first line of the new 596.7 in H.R. 2234 would have read: 1. “REVOCATION. After marriage, a MARITAL agreement may be revoked, IN WHOLE OR IN PART, only as follows”

H.R. 2234 was not the end of the Legislature’s exploration of possible changes to section 596.7. Senate Study Bill 1196 proposed similar changes to this code section. In 1196, the current section titled “Revocation” would have been changed to “Revocation AND AMENDMENT.” The very first line then would have read “REVOCATION. After marriage, a MARITAL agreement may be revoked, IN WHOLE OR IN PART, only as follows” The district court seriously erred by holding that the current statutory language somehow authorizes amendments and partial revocations. Since the enactment of the IUPAA, the Iowa Supreme Court has never found that “partial” revocations or amendments are allowed. Since the enactment of the IUPAA, our legislators have never enacted changes to Iowa Code Section 596.7 that would authorize either amendments or partial revocations.

Elizabeth’s initial brief and her reply brief discussed these issues extensively. The district court’s ruling fails to engage with the plain meaning of the statute, H.B. 2234 or S.B. 1196 at all. It instead makes the curious finding that the Purported Partial Revocation cannot be an amendment because it is deleting words and sections from the Antenuptial contract instead of adding words. As discussed

above, the word “amend” does not strictly mean adding words. It can also and often does mean the amendment is a deletion of words or phrases. *See e.g.*, *Wengert v. Thomas*, 152 S.W.3d 379, (Mo. Ct. App. 2004) (finding that removing a property disclosure statement from a contract is a valid amendment); *Locke v. Madcon*, 340 S.3d 946 (La. Ct. App. 2021) (overturning an amended judgment on appeal as proper procedure for amending the judgment was not followed but amendment plainly would have been allowed had procedure been followed); *Medtron Software Intelligence Corp. v. Metairie Gastroenterology, APMC*, 278 So.3d 1016 (La. Ct. App. 2019) (involving parties that entered into a contract permitting amendments to the agreement that could either add or remove authorized users and on numerous occasions did remove authorized users; this was not a central issue in this case); *Cross DeBoer LLC v. Seigel*, 202 N.E.3d 420 (Ind. Ct. App. 2022) (involving a seller’s proposal to remove leaseback provision from purchase agreement plainly would have been authorized if the parties had reached a mutual agreement).

To adopt the district court’s reasoning would mean we must believe that the Legislature deliberately included a massive loophole in section 596.7 whereby any post-marital agreement that subtracts words or sections from premarital agreement will be valid. Whereas any post-marital agreement that adds words or sections to a premarital agreement will be void. This makes no sense whatsoever, and we do not

have to pretend that it does. An amendment can either add or delete words from the initial agreement, but if done in the context of an Iowa premarital agreement, Section 596.7 prohibits it.

B. The model rule upon which 596.7 is based authorizes Partial Revocations and Amendments, but the Iowa Code does not.

The model rule, which many states have adopted verbatim, explicitly authorizes amendments to premarital agreements without any consideration. Iowa's code very notably does not.¹ Our Supreme Court has noted that, "our comparison of features of the Iowa Uniform Premarital Agreement Act (IUPAA) and the Uniform Premarital Agreement Act (UPAA) reveals the IUPAA's tendency towards providing more protection to vulnerable parties." *In re Marriage of Erpelding*, 917 N.W.2d 235, 244 (Iowa 2018). The *Erpelding* court engaged in a

¹ In fact, Iowa Code Section 596.7 appears to be unique in comparison to every other state that utilizes some version of the UPAA. Most states follow the UPAA verbatim or very closely in stating that, "after marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amendment or revocation is enforceable without consideration. *See generally* Uniform Premarital Agreement Acts of Indiana, Delaware, Arizona, North Carolina, Nevada, Illinois, Florida, Virginia, Kansas, Oklahoma, Texas, Idaho, Utah, Connecticut, California, South Carolina, West Virginia, Montana, Oregon, Maine, Washington D.C., New Jersey, Washington, South Dakota, Hawaii, Alabama, Mississippi, Arkansas, New Mexico, Rhode Island. Colorado, Minnesota, and North Dakota have somewhat unique frameworks for their versions of the UPAA. Colorado defines "amendment" in its statute to mean a "modification or revocation of a premarital agreement or marital agreement." CO. Rev. Stat. 14-2-302 (1). Colorado provides significantly more protections than many states, particularly in that the parties signing the agreement must have had access to independent legal representation and the agreement must have a notice of waiver of rights and an explanation in plain language. *See* CO. Rev. Stat. 14-2-309. In Minnesota, a "post-nuptial contract or settlement is valid and enforceable if at the time of its execution each spouse is represented by separate legal counsel." Minn. Rev. Stat. 519.11, subd. 1a (c). North Dakota will not enforce a premarital or marital agreement if the "party's consent to the agreement was involuntary or the result of duress," if the party did not have access to independent legal representation, if the party did not have access to independent legal representation, the agreement must have a notice of waiver of rights and an explanation of such in plain language and, finally, such agreements are not enforceable if there is no adequate financial disclosure. N.D.C.C. 14-03.2-01 and 14-03.2-08.

lengthy examination and comparison of the IUPAA and UPAA and concluded that both children and financially dependent spouses are “vulnerable parties” that section 596 seeks to protect and that courts should interpret the IUPAA provisions to protect such parties. *Id.*

The arguments set forth by Defendants, their attorneys, and the district court cut in complete opposition to *Erpelding* and *Hansen*. Instead of interpreting 596.7 as providing additional protections to vulnerable parties such as Elizabeth, the district court’s reasoning provides no protections at all to Elizabeth. In fact, this reasoning would strongly encourage sharp and deceptive tactics (like David’s) by spouses during the marriage. If section 596.7 authorizes partial revocations and amendments without any regulatory structure, then once the marriage has commenced what prevents financially sophisticated spouses from presenting their dependent spouse with “partial revocations” or amendments that are grossly inequitable and one-sided? What would stop them from leveraging their marriage or strong-arming their vulnerable spouse? Under the district court’s analysis and conclusion, the answer to these questions is simple: absolutely nothing.

We know that the IUPAA cuts in the opposite direction from the reasoning adopted by the district court. The IUPAA breaks from the UPAA in important ways when it comes to protecting vulnerable spouses: (1) protecting the right to spousal support against waiver, in fact more than almost any other jurisdiction, (2)

imposing a duty to execute all documents necessary to enforce the agreement, (3) establishing more grounds for claims of unenforceability. *Erpelding* at 241-43. In keeping with the IUPAA's general theme of providing more protection and not less, this Court should reinforce the principles set forth in *Erpelding* by finding that 596.7 provides more protection for vulnerable spouses like Elizabeth than the model rule.

This is not a close call. The plain meaning of the statute provides absolute protection to Iowa spouses against "partial revocations" and amendments during the marriage by forbidding them. The trial court agrees that section 596.7 forbids amendments but strangely concludes that substantively identical "partial revocations" are allowed in a statutory structure that goes out of its way to offer additional protections to vulnerable parties. Our legislature has on two occasions explored loosening the restrictions of section 596.7 on post-marital changes to premarital agreements and twice declined to do so. Finally, this very Court in *Erpelding* exhaustively explored the numerous ways in which the IUPAA provides more protection than the model rules found in the UPAA. This case is an opportunity to reinforce the added protections at the heart of the IUPAA, not only for Elizabeth but for the many, many potentially vulnerable spouses in our state.

IV. THE PURPORTED PARTIAL REVOCATION DOES NOT MEET BASIC CONTRACTUAL REQUIREMENTS.

Even if we assume for the sake of argument that section 596.7 does not govern the Purported Partial Revocation, the document still fails as a contract as it lacks any new consideration. A valid contract consists of an offer, acceptance, and consideration. *Taggart v. Drake Univ.*, 549 N.W.2d, 796, 800 (Iowa 1996).

Consideration means that the promise sought to be enforced was bargained for and given in exchange for a reciprocal promise or act. *Maregeson v. Artis*, 776 N.W.2d 652, 656 (Iowa 2009).

“Generally, a promise to perform a preexisting duty does not constitute consideration.” *Id.* There is no new consideration in the Purported Partial Revocation. Elizabeth purports to give up her strongest contractual protection in Paragraph 8 of the premarital agreement and receives absolutely nothing in return. (App. 9-17; 54-55). To modify a contract, “new consideration is necessary.” *Recker v. Gustafson*, 279 N.W.2d 744, 754 (Iowa 1979).

Common law does not govern the Antenuptial Contract or Purported Partial Revocation given the passage of enactment of section 596 in 1992. Even as a hypothetical exercise where we assume common law governs this discussion, the Purported Partial Revocation fails.

V. THE PURPORTED PARTIAL REVOCATION IS UNCONSCIONABLE AND VIOLATES PUBLIC POLICY.

A. The Purported Partial Revocation is Procedurally and Substantively Unconscionable.

Beyond the irrefutable evidence that the Purported Partial Revocation is not authorized by Iowa law, the document is unconscionable. The agreement is one “where no person in his or her right senses would make it on the one hand, and no honest and fair person would accept it on the other hand.” *See Bartlett Grain Co. v. Sheeder*, 829 N.W.2d 18, 27 (Iowa 2013). Let’s examine the “deal” struck by Elizabeth and David in December 2017. Elizabeth gives up her strongest contractual protection in paragraph 8 of the antenuptial contract while receiving nothing in return. (App. 54).

The purported partial revocation states that paragraph 8 is “inconsistent with the desires of Dave and Elizabeth” (App. 54) We would have to believe that after thirty years of marriage, hard work, and sacrifice, Elizabeth did not and does not desire to receive one-third of the net equity in real property valued at approximately \$15 million. But, of course, we know that she does as she has stated clearly in this pending legal matter. Elizabeth now knows but did not know in 2017 that David excluded her from his estate plan. (App. 43). David and his attorney Jack Ruesch realized as early as March of 2016 that the antenuptial posed a

significant roadblock to David's primary estate planning goal, to make Eric his sole heir and beneficiary of his assets. The purported partial revocation attempts to solve David's problem by having Elizabeth sign away her contractual rights with the stroke of a pen.

There is no bargain here, bad, or otherwise. Elizabeth receives nothing in exchange for giving up her contractual rights. The Purported Partial Revocation is unconscionable and cannot be enforced.

B. The purported partial revocation violates public policy.

Preserving marital relationships is a fundamental Iowa public policy. *Norris v. Norris*, 174 N.W.2d 368, 370 (Iowa 1970). This brief and the previous briefs filed at the district court level offer the easiest method of examining the 2017 purported partial revocation: it is not authorized by Iowa Code section 596.7 and is void. Beyond it being inconsistent with Iowa law, the purported partial revocation and documents like it take advantage of the trust built between spouses.

In many, if not most marriages, one spouse takes the lead in managing finances, making sure bills are paid, making investment decisions, conversing with attorneys, filing taxes in a timely manner, etc. Of course, all these routine aspects of marriage generally involve *both* spouses signing documents. The spouse who typically handles legal documents presents the other spouse with a document, and it is signed. They then move on without much further thought on the matter.

In the dynamic envisioned by the Defendants, their attorneys, and the district court, spouses must be inherently mistrustful of each other. Particularly if you signed a premarital agreement, do not simply trust your spouse to act in your best interests. Presume that they have ulterior motives and scrutinize each and every document they have you sign and, even better, go seek independent legal counsel before you sign anything.

Crucially, prior to marriage we are at arm's length in relation to our potential spouse. It may not be easy to walk away from an engagement, but it is much, much easier to do than walking away from a long-term marriage. There is more pressure during a marriage to be a "team player" and do what is in the best interest of the marital relationship. The structure of the IUPAA rightly encourages this dynamic and provides ample protections to vulnerable parties in marital relationships. It encourages good faith and goodwill in our marriages.

This Court has a choice between affirming Iowa's long-standing commitment to the marital relationship and all the benefits it provides to our society or endorsing a marital dynamic where spouses must mistrust each other and scrutinize every single document they are tasked to sign as if it one day this document may have catastrophic consequences for them. The choice is clear: uphold Iowa's commitment to our married couples and reject these destructive arguments that pit spouses against each other.

**VI. THERE IS NO DISPUTE OF MATERIAL FACT AS TO
DEFENDANTS' COUNTERCLAIMS, AND THEY MUST BE
DISMISSED.**

Defendants contend that David promised to and ultimately did transfer property to Elizabeth in exchange for her signing the Purported Partial Revocation. (App. 72-73). The Purported Partial Revocation recites no consideration of any kind. The Purported Partial Revocation does not mention that it would include attachments, counterparts, or ancillary agreements of any kind.

Defendants have centered their entire case around the Purported Partial Revocation. For many, many reasons this document cannot be enforced and is void under Iowa law. Assuming for the sake of argument that the Purported Partial Revocation is a contract, we must first look to the intent of the parties and that is, absent ambiguity, "determined by what the contract itself says." *Peak v. Adams*, 799 N.W.2d 535, 543 (Iowa 2011). On the topic of consideration, attachments, counterparts, or ancillary agreements the Purported Partial Revocation is not ambiguous: there is no consideration and there are no additional documents. Even if the document contained ambiguities on these issues, those doubts would be resolved against the drafter. *Village Supply Co. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 555 (Iowa 1981).

Defendants rely on an affidavit from Ruesch and deposition exhibits they discussed with Elizabeth during her sworn testimony. (App. 286-297). Aside from the irrelevance of these deposition exhibits, they are inadmissible. They are not public records. They are not business records. Neither Elizabeth nor any witness can lay foundation for these documents. When ruling on a summary judgment, the court must rely on evidence that is likely to be admissible. IOWA R. CIV. P.

1.981(5). What Defendants have presented is an unenforceable Purported Partial Revocation that recites no consideration and then several irrelevant, inadmissible documents on unrelated matters with no competent witness to testify to any aspect of it. Ruesch's testimony provides very limited relevant information from his role as David's attorney but offers no insights as to Elizabeth or anything else at issue in this case.

Elizabeth does not deny that she "received" property and money during her marriage from David and, in fact, even after she signed the Purported Partial Revocation. It is not a surprise to anyone that spouses transfer marital property back and forth to each other during a lengthy marriage. There is no presumption that these transfers are part of a contract formed between the spouses. In fact, the presumption regarding spousal transfers is that they are gratuitous, and this is a strong presumption. *See Ferris v. Barrett*, 95 N.W.2d 527, 530-31 (Iowa 1959). Even Eric Roberts himself testified that his father began considering transfers of

property to Elizabeth in 2019, not at or around the time of the Purported Partial Revocation. Eric Robert's Deposition, (App. 352). Defendants base their counterclaims on either irrelevant, inadmissible documents or connecting unrelated transfers of property to the Purported Partial Revocation. The facts and law speak clearly to Defendants' counterclaims; they have no merit and must be dismissed.

CONCLUSION

As stated previously, these are not close questions. It does not matter what the document is titled. A "partial revocation" by any other name is just an amendment. Iowa law does not permit amendments to premarital agreements. Iowa law does not permit partial revocations. The entire structure and history of the IUPAA support Elizabeth's arguments herein. This Court has a choice between either offering the full protection of the IUPAA compared to the UPAA for vulnerable parties like Elizabeth or breaking with the statute's plain language, its legislative history, and every single relevant case to offer Elizabeth no protection under Iowa law at all.

Our district courts cannot ignore statutes when they have a plain meaning. District courts may not rewrite statutes to authorize otherwise void and invalid legal instruments. Only our Legislature can alter and amend Section 596.7 and the IUPAA. Our Legislature has spoken loud and clear through Section 596.7 and that

is why the district court must be reversed and judgment entered in favor of Elizabeth.

Finally, Defendants' counterclaims must be dismissed. There is no relevant, admissible evidence of any kind that transfers received by Elizabeth years after the Purported Partial Revocation had anything to do with that document.

ORAL ARGUMENT

Appellant believes these novel and important issues of Iowa law would benefit from the Court hearing directly from counsel involved. Appellant respectfully requests that this Court schedule this matter for oral argument at the Iowa Supreme Court.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies this brief was electronically filed and served on the 31st day of August 2023 upon the following persons and upon the Clerk of the Supreme Court using the Electronic Document Management System, which will send notification of electronic filing (constituting service):

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The undersigned hereby certifies that the cost of printing the Final Brief of the Appellees was \$0.00.

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