IN THE SUPREME COURT OF IOWA

NO. 23-1131

ELIZABETH ROBERTS,

Petitioner/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,

Respondent/Appellee,

PETITIONER-APPELLANT FINAL REPLY BRIEF

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

RESPECTFULLY SUBMITTED,

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER OR NOT COMMON LAW WAS SUPERSEDED BY SECTION 596 OF THE IOWA CODE.

Authorities

IOWA CODE § 596.7(1) (2023)

Hussemann v. Hussemann, 847 N.W. 2d 219, 224 (Iowa 2014)

In re Marriage of Erpelding, 917 N.W.2d 235, 242 (Iowa 2018)

Meinders v. Dunkerston Cmty. Sch. Dist., 645 N.W.2d 632, 637 (Iowa 2002)

Hansen v. Hansen, No. 17-0889, 2018 Iowa App. LEXIS 921 at *12 (Iowa Ct. App. Oct. 10, 2018)

II. WHETHER OR NOT CONTRACT MODIFICATIONS REQUIRE NEW CONSIDERATION.

Authorities

Recker v. Gustafson, 279 N.W.2d 744, 754 (Iowa 1979)

ARGUMENT

I. THE PLAIN LANGUAGE OF THE STATUTE DICTATES THE OUTCOME OF THIS CASE.

The Appellee is correct when they state, "Iowa courts must apply Iowa Code chapter 596 in determining [a premarital agreement's] validity and how to enforce it. (*See* Appellee's Br. 26). There is no dispute that the code allows for prenuptial agreements and the revocations of such agreements. The difficulty in responding to Appellee's brief is that it is hard to decipher whether Appellee is considering the purported Partial Revocation at issue in this case as a revocation or an amendment.

Appellee begins his argument by noting that "[b]ecause section 596.7(1) does not distinguish between revocations in whole or in part, and revocations are statutorily valid, the parties' Partial Revocation is valid." (Appellee's Br. 30). Without providing any citation or authority, he then makes the bold claim that when the legislature deleted the word "amended" from the model rule, they intended to leave the matter of amendments to common law. (Appellee Br. 33). Finally, in the next section of their brief, Appellee argues that revocations are enforceable without consideration, so that means partial revocations are enforceable without consideration. (Appellee Br. 36). Within just a few pages of his brief, Appellee analyses the Partial Revocation as a revocation, a recission, a partial revocation, an

amendment, and then back to a revocation. (Appellee's Br. 26-36). Fortunately for this Court, these issues are not convoluted or confusing, they are rather straightforward. The purported partial revocation at issue in this case plainly sought to amend the 1993 premarital agreement and Iowa Section 596 and the relevant case law does not permit this.

a. Common law was superseded in 1992 when Section 596 was enacted by the Iowa legislature and signed into law.

In 1992, the Iowa legislature enacted the IUPAA, its own version of the model rule UPAA. Iowa's legislature did not enact the model rule verbatim as many states did. Instead, the legislature purposefully deleted the word "amended" from the model rule and enacted a statute that only allows premarital agreements to be revoked after a marriage. *See* IOWA CODE § 596.7(1) (2023). The analysis should end here.

Alternatively, if the Court believes the statute to be ambiguous and wants to analyze the legislative intent, this Court has been clear on this topic: "[l]egislative 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). Here, the legislature included the word "revoke" in the IUPAA but deliberately omitted "amend" in stark contrast to the model rule on which the statute is based. *See id*.

Despite the Meinders case and its obvious application to this matter, Appellee curiously attempts to convince this Court that when the legislature deleted the word "amend" from the model rule, they actually sought to allow amendments via the common law tradition of contract amendments. (Appellee Br. 33). Appellee provides absolutely no support of any kind for this core argument in their brief. The IUPPA is not ambiguous, and it supersedes any case law prior to 1992 that potentially conflicts with its terms.

b. Not a single case since the enactment of Section 596 in 1992 supports Appellee's arguments and, in fact, several directly contradict the core arguments set forth by Appellee.

Appellee continues to emphasis case law that occurred well prior to the enactment of the IUPAA. Instead we should analyze the cases decided since 1992 that have discussed Section 596. . To summarize, the Iowa Supreme Court has found: "[a]lthough our legislature has authorized antenuptial agreements, it has made no such allowance for postnuptial agreements." *Hussemann v. Hussemann*, 847 N.W. 2d 219, 224 (Iowa 2014). The Court of Appeals in 2018 held as follows: "[w]e conclude a premarital agreement executed after January 1, 1992, may not be amended after marriage, although it may be revoked, abandoned, or the rights thereunder waived." *Hansen v. Hansen*, No. 17-0889, 2018 Iowa App. LEXIS 921 at

*12 (Iowa Ct. App. Oct. 10, 2018). And even further, "clearly, the legislature chose to omit the right to amend a premarital agreement after marriage…" *Id.* The *Erpelding* court stated: "[i]n particular, we discern the IUPAA provides greater protection for vulnerable parties in some contexts than the UPAA." *In re Marriage of Erpelding*, 917 N.W.2d 235, 242 (Iowa 2018).

If this court should rely on plain, ordinary meanings of words as they should then we can safely conclude: (1) post-nuptial agreements are not authorized by Iowa statute; (2) amendments to pre-marital agreements are not authorized by Iowa statute; (3) The IUPAA differs considerably from the UPAA in important respects. Nothing that Appellee has written can change any of those three factual statements. There is not a single case since the enactment of the IUPAA that has held post-nuptial agreements, amendments, or partial revocations are authorized by Iowa code. And, clearly, the case law that occurred after 1992 directly contradicts Appellee's core arguments.

Appellee's arguments represent a radical departure from the plain language of section 596, from the structure of section 596, and from the relevant case law after the enactment of section 596. To adopt Appellee's arguments, this court must change the meaning of revocation in the statute

so that revocation not only means cancellation but also means amendment, partial revocation, and postnuptial agreement. To adopt Appellee's arguments, this court must overrule *Hussemann*, determine that the Court of Appeals wrongly decided *Hansen*, and strongly back away from its findings in *Erpelding*. Indeed, even the holding in *Meinders* concerning basic rules of statutory interpretation must be revisited to side with the Appellee in this matter. Instead, Elizabeth simply asks this court to interpret words plainly as it has before, to stand by its prior precedent, and uphold the structure and intent of section 596.

Appellee focuses extensively on common law. This is not surprising as the strongest support for his arguments all exist prior to the 1992 enactment of Section 596. David and Elizabeth signed the Antenuptial Contract at issue here in 1993 so section 596 itself provides the strongest and most obvious support for Elizabeth's argument that section 596 does not permit the 2017 purported partial revocation. Beyond that, all the relevant cases fall in line with our arguments herein, specifically that the statute specifically permitted revocations but does not permit partial revocations, post-nuptial agreements or amendments to premarital agreements. Section 596 dictates that the 2017 purported partial revocation is not enforceable and

thus its attempt to modify, amend, or partially revoke the 1993 Antenuptial Contract must fail.

II. EVEN AT COMMON LAW, CONTRACT MODIFICATIONS REQUIRE NEW CONSIDERATION.

Appellee argues that the purported partial revocation is valid as a common law contract amendment because it does not require new consideration, and even if it did, the parties subsequently transferred property in exchange for signing the partial revocation. (Appellee's Br. 36-37). Conveniently, Appellee contends that the partial revocation should fall under the "revocation umbrella" and not the "modification umbrella" because the IUPAA permits revocations without consideration. *See* IOWA CODE § 596.7(1) (2023). Appellee is simply wrong. Using basic principles of our shared English language means that a "partial revocation" is an "amendment". *See Amend,* MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/amend. (last visited Aug. 25, 2023) (defining "Amend" as the act of altering formally by modification, deletion, or addition). A partial revocation by any other name is an amendment.

Again, assuming for the sake of this appeal that it is necessary to analyze the partial revocation as a common law contract, the relevant case law supports Elizabeth, not Appellee. In direct contrast to the *O'Dell* case cited by Appellee, this Court has held that *O'Dell* and its progeny of cases

no longer control: "Because we believe *Lamb's Estate*, *O'Dell*, and *Siebring* to have digressed from our previous case law on the necessity of consideration to support a contract modification without either sound reasoning or reconciliation of previous authority, we reaffirm our prior holdings that **new consideration** is necessary to support a contract modification."

Despite Appellee not introducing any admissible evidence regarding consideration for the 2017 purported partial revocation, Appellee argues that consideration exists because David and Elizabeth entered into subsequent agreements that set forth property and cash transfers. (Appellee's Br. 37). Appellee also mistakenly states that the new agreement sets forth property transfers as consideration for the execution of the partial revocation. (Appellee's Br. 37). Nowhere in the record does such evidence exist.

There is not a single piece of evidence that the property transfers were the consideration for Elizabeth signing the purported partial revocation. This statement is categorically false. Beyond the four corners of the document not referencing any consideration, Elizabeth herself testified that she received nothing in exchange for signing the document and signed it after David told her it would keep their property out of probate. (App. 42). Finally, even Eric Roberts himself testified that David began considering transfers of property

to Elizabeth in 2019, not at or around the time of the Purported Partial Revocation. (App. 352).

CONCLUSION

Despite Appellee's insistence that this court focus on the common law contract tradition, this case is not governed by common law. Iowa enacted Section 596 in 1992, and since then that code section has governed premarital agreements. Section 596 governs the 1993 Antenuptial Contract and 2017 purported partial revocation. All pertinent case law after the enactment of the IUPAA supports Elizabeth's arguments. It would be incredibly curious and nonsensical for section 596 to explicitly permit revocations but silently also permit partial revocations, amendments, and postnuptial agreements. The legislature chose to omit those terms from section 596.7. The legislature did not have to adopt a comprehensive statutory scheme regulating premarital agreements in 1992, but it purposefully chose to do so. Consequently, Appellee's reliance on the common law of contracts is misguided as premarital agreements are regulated by statute.

For all the reasons set forth in Elizabeth's briefing, the 2017 purported partial revocation is simply an attempt to amend or modify the 1993 antenuptial contract, and this is not permitted by Iowa Code Section 596.

The plain language of the statute makes this clear and so does every single, pertinent case since 1992. Iowa enacted its version of the UPAA in 1992 and deliberately omitted the model rule's use of the word "amend" and instead only uses the word revoke. We must assume the legislature purposefully omitted "amend" from the IUPAA, and consequently Appellee's argument that amendments, partial revocations, and modifications (all truly amounting to the exact same thing) are all implicitly authorized by the statute, must fail. This is not a close call and the district court's July 12, 2023 order must be reversed.

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.

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies this brief was electronically filed and served on the 20th day of November 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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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

1. This brief complies with the type volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 1,820 words.
2. This brief complies with the type face requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

CERTIFICATE OF COSTS

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

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