

IN THE SUPREME COURT OF IOWA

ELIZABETH ROBERTS,)
)
PLAINTIFF & COUNTERCLAIM)
DEFENDANT/APPELLANT,)
)
AND CONCERNING)
)
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.)

S.C. NO. 23-1131

APPEAL FROM THE IOWA DISTRICT COURT
FOR POTTAWATTAMIE COUNTY
THE HONORABLE CRAIG DREISMEIER, JUDGE

APPELLEE'S PROOF BRIEF
AND REQUEST FOR ORAL ARGUMENT

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Statement of Issues Presented for Review

1. Preservation of error.

State v. Lange, 831 N.W.2d 844, 846-47 (Iowa Ct. App. 2013)

Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (2006)

In re Marriage of Gensley, 777 N.W.2d 705, 718-19 (Iowa Ct. App. 2009)

2. Standard of review.

Susie v. Family Health Care of Siouxland, P.L.C., 942 N.W.2d 333, 336 (Iowa 2020).

Kennedy v. Zimmerman, 601 N.W.2d 61, 63 (1999).

3. The district court properly held that the parties' partial revocation of their premarital agreement is authorized by Iowa law.

In re Marriage of Christensen, 543 N.W.2d 915, 918 (Iowa Ct. App. 1995)

In re Marriage of Pillard, 448 N.W.2d 714, 715 (Iowa Ct. App. 1989)

In re Marriage of Gonzalez, 561 N.W.2d 94, 96 (Iowa Ct. App. 1997)

In re Marriage of Barten, No. 22-0084, 2023 WL 2395324, at *5 (Iowa Ct. App. Mar. 8, 2023)

A. Iowa Code section 596.7 permits parties to a premarital agreement to partially revoke the agreement.

Iowa Code ch. 596 (2023)

In re Marriage of Erpelding, 917 N.W.2d 235, 238 (Iowa 2018)

In re Marriage of Spiegel, 553 N.W.2d 309, 316 (Iowa 1996)

Iowa Code § 596.12 (2023)

In re Marriage of Shanks, 758 N.W.2d 506, 511 (Iowa 2008)

(1) **The plain language of section 596.7 demonstrates that “partial” revocations are permitted.**

Iowa Code ch. 596 (2023)

Iowa Code § 596.7 (2023)

Iowa Code § 596.7(1) (2023)

In re Marriage of Hansen, No. 17-0889, 2018 WL 4922992, at *5 (Iowa Ct. App. Oct. 10, 2018)

In re Marriage of Shanks, 758 N.W.2d 506, 511 (Iowa 2008)

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Allen v. Pegram, 16 Iowa 163, 173–74 (1864)

Inman Mfg. Co. v. Am. Cereal Co., 124 Iowa 737, 741, 100 N.W. 860, 861 (1904)

- (2) Proposed yet unadopted legislation is not binding on Iowa courts and is not evidence that section 596.7 was meant to ban amendments, partial revocations, or otherwise.

H.R. 2234, 83rd Leg., 2nd Sess. (Iowa 2010)

S.S.B. 1196, 85th Leg., 1st Sess. (Iowa 2013)

Butler Mfg. Co. v. Elliott & Cox, 211 Iowa 1068, 233 N.W. 669, 670 (1930)

Allen v. Pegram, 16 Iowa 163, 173–74 (1864)

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

Iowa Code § 596.7 (2023)

In re Marriage of Hansen, No. 17-0889, 2018 WL 4922992, at *5-*6 (Iowa Ct. App. Oct. 10, 2018)

In re Marriage of Shanks, 758 N.W.2d 506, 512 (Iowa 2008)

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O'Dell v. O'Dell, 238 Iowa 434, 455, 26 N.W.2d 401, 412 (1947)

In re Marriage of Erpelding, 917 N.W.2d 235, 244 (Iowa 2018)

4. The partial revocation meets basic contractual requirements and is valid.

Iowa Code ch. 596 (2023)

In re Marriage of Erpelding, 917 N.W.2d 235, 238 (Iowa 2018)

In re Marriage of Spiegel, 553 N.W.2d 309, 316 (Iowa 1996)

Iowa Code § 596.12 (2023)

In re Marriage of Shanks, 758 N.W.2d 506, 511 (Iowa 2008)

Iowa Code § 596.7(1) (2023)

5. The Partial Revocation is neither unconscionable nor violates public policy.

Iowa Code ch. 596 (2023)

In re Estate of Rhoten, No. 18-0753, 2019 WL 1056831, at *2 (Iowa Ct. App. Mar. 6, 2019)

Gouge v. McNamara, 586 N.W.2d 710, 713 (Iowa Ct. App. 1998)

Iowa Code § 596.8(1) (2023)

In re Marriage of Shanks, 758 N.W.2d 506, 515-16 (Iowa 2008)

A. The Partial Revocation is not procedurally or substantively unconscionable.

B. The Partial Revocation does not violate public policy.

DeVetter v. Principal Mut. Life Ins. Co., 516 N.W.2d 792, 794 (Iowa 1994)

Rogers v. Webb, 558 N.W.2d 155, 157 (Iowa 1997)

Walker v. American Family Mut. Ins. Co., 340 N.W.2d 599, 601 (Iowa 1983)

6. The signed revocation and the acts of David and Elizabeth were an intentional relinquishment/waiver of known rights.

Scheetz v. IMT Ins. Co. (Mut.), 324 N.W.2d 302, 304 (Iowa 1982)

Travelers Indemnity Co. v. Fields, 317 N.W.2d 176, 186 (Iowa 1982)

7. There is a dispute of material fact as to David's counterclaims, and those counterclaims are not moot and should be reinstated if the appellate court invalidates the Partial Revocation.

Ferris v. Barrett, 250 Iowa 646, 95 N.W.2d 527 (Iowa 1959)

Routing Statement

This case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain this case for appellate review. *See* Iowa R. App. P. 6.1101. Further, this case should be transferred to the Court of Appeals because it involves questions that can be resolved by applying existing legal principles. *See* R. 6.1101(3)(b).

Statement of the Case

Nature of the case

W. David (hereinafter “David”) and Elizabeth (hereinafter “Elizabeth”) Roberts entered into a valid and enforceable premarital agreement prior to their marriage in 1993 (hereinafter “Premarital Agreement”). (App. at 9.) In 2017, by a written document they signed, the parties partially revoked their Premarital Agreement (hereinafter “Partial Revocation”). (App. at 21.) Elizabeth appeals the district court’s summary judgment that the Partial Revocation is valid as a matter of law. (“Ruling On Plaintiff Elizabeth Roberts’ Motions for Summary Judgment” (hereinafter “MSJ Ruling”).) (App. at 392.)

Course of proceedings and disposition in district court

The Estate generally agrees with Elizabeth's recitation of the course of proceedings but offers this supplement. Elizabeth filed a motion in the estate of her deceased husband, David, to enforce the parties' premarital agreement and "if and only if" the court found the premarital agreement invalid, then Elizabeth invoked her elective share and spousal allowance of the estate per Iowa Code section 633.236. (App. at 7.) In response, the Estate agreed the parties' premarital agreement was "valid and enforceable" but asserted that the parties' Partial Revocation was also valid, so the court should enforce only the non-revoked portions of the premarital agreement. (App. at 18.)

Elizabeth filed a petition for declaratory judgment requesting the court to enforce paragraph 8 of their premarital agreement and to ignore the parties' Partial Revocation. (App. at 24 ¶8.) Elizabeth also requested the court award her "one-third of the net equity in the real property of the parties at the time ... one of them would predecease the other." (App. at 24 ¶10.) In response, the Estate again provided that David and Elizabeth entered a Partial

Revocation that revoked paragraph 8 of their Premarital Agreement. (App. at 36 ¶¶14-16.) The Estate also claimed that the court should deny Elizabeth's declaratory judgment petition because David, acting in reliance upon the Partial Revocation, transferred approximately \$900,000.00 in real property to Elizabeth. (*Id.* ¶15.)

Elizabeth filed a motion for summary judgment asserting the Partial Revocation is invalid as a matter of law. (App. at 38.) The Estate responded by counterclaiming against Elizabeth for a return of the property transferred to her based upon the Partial Revocation, should the court hold the Partial Revocation invalid. (App. at 82.) Elizabeth filed a second summary judgment motion arguing the Estate's counterclaims should be dismissed because the Partial Revocation lacked consideration. (App. at 87.)

Ruling on Elizabeth's motions for summary judgment, the district court concluded that the Partial Revocation was valid as a matter of law, which meant that the court would enforce the non-revoked terms of the parties' premarital agreement. Because it concluded that the Partial Revocation was valid, it held that the

Estate's counterclaims, which were based on the court invalidating the Partial Revocation, were moot, as such Elizabeth's second motion for summary judgment was moot. Elizabeth appeals.

Statement of the Facts

The Estate generally agrees with Elizabeth's recitation of the relevant facts but offers this supplement. Elizabeth voluntarily signed and entered into the premarital agreement with David on March 12, 1993. (App. at 156:25-157:13, 163:17-19 (Elizabeth's Depo. Tr. 17:25-18:13, 24:17-19); *see* App. at 9.) Elizabeth was represented by independent counsel. (App. at 157:14-158:24 (Elizabeth's Depo. Tr. 18:14-19:24); *see* App. at 9.)

During the time relevant to this case, David's attorney was Jack Reusch. (App. at 286 ¶2.) On May 31, 2017, evidence shows that Ruesch's office received a letter written by Elizabeth that detailed her desire to modify the parties' Premarital Agreement, particularly she wanted to "waive my dower rights", in exchange for real estate and cash. (App. at 286 ¶3; App. at 289 Ex. A.) She explained: "After much discussion, months of anxiety, and guilt trips, and desperation, I have come to the conclusion that the situation in our home is not going to improve..." (App. at 289 Ex. A; *see* App. at 214:15-216:9 (Elizabeth's Depo. Tr. 75:15-77:9).) In exchange for waiving certain rights and transferring her share of

certain real estate¹, she wanted to be absolved of debt and receive cash. (App. at 289 Ex. A; *see* App. at 214:15-216:9 (Elizabeth’s Depo. Tr. 75:15-77:9).) Elizabeth explained, “I am 76 years old ...”² She suffered from health conditions and she “would like to enjoy the time [she had] left”, so she wanted her terms accomplished quickly as she also planned to visit her family in Texas. (App. at 225:4-11 (Elizabeth’s Depo. Tr. 86:4-11); *see* App. at 289 Ex. A.) Ruesch then spoke with David and faxed Elizabeth’s letter to David. (App. at 286 ¶3; App. at 290 Ex. B.)

Elizabeth admitted to discussing the exchanges of property and other topics that led to the terms found in the ancillary agreement. (App. at 189:12-190:21, 197:25-198-16, 204:8-15, 223:4-10, 233:2-236:25 (Elizabeth’s Depo. Tr. 50:12-51:21, 58:25-59:16, 65:8-15, 84:4-10, 94:2-97:25); App. at 232 Ex. 7, 235 Ex. 8.)

¹ Located at 407 Durant, Harlan, Iowa.

² She was 76 years old in 2017. (App. at 144:23-24 (Elizabeth’s Depo. Tr. 5:23-24); *see* App. at 216:10-13 (Elizabeth’s Depo. Tr. 77:10-13); App. at 292 Ex. D & Ex. E.)

Elizabeth testified: “I believe David and I discussed this at length.” (App. at 226:20-25 (Elizabeth 87:20-25).)

On June 1, 2017, David returned Elizabeth’s letter to Ruesch with David’s handwritten notes. (App. at 291 Ex. C.) Ruesch had another conversation with David about Elizabeth’s desires. (App. at 286 ¶4.) Specifically, David informed Ruesch that Elizabeth had drafted her proposal, (App. at 289 Ex. A), on Memorial Day, Monday, May 28, 2017. (App. at 286 ¶5.) Ruesch advised David not to sign Elizabeth’s letter, so Ruesch could draft a formal document for David’s and Elizabeth’s negotiation and execution. (App. at 287 ¶6.)

Soon after June 1, 2017, Ruesch received additional terms Elizabeth proposed. (App. at 287 ¶13; App. at 297 Ex. G.) Peggy Curuso, Ruesch’s legal assistant, handwrote additional notes. (Id.) Ruesch reviewed and included those terms in the agreements. (App. at 287 ¶13.) Ruesch began working on a “Partial Revocation of Antenuptial Agreement” on July 31, 2017, completing a draft the next day. (App. at 286 ¶7 Ex. D (“Partial Revocation”).)

On August 3, 2017, Ruesch again spoke with David. (App. at 287 ¶8.) Ruesch prepared deeds for the Durant property per the parties' terms. (App. at 287 ¶8; App. at 289 Ex. A; App. at 292 Ex. D.) Ruesch also drafted the ancillary agreement. (App. at 287 ¶8; App. at 294 Ex. E.) Ruesch drafted agreements separately to keep the Partial Revocation, (App. at 292 Ex. D), separate from the ancillary agreement, (App. at 294 Ex. E), so that the Partial Revocation addressed only the partial revocation of the Antenuptial Agreement and the legal consideration that would be exchanged contemporaneously would be addressed in the ancillary agreement. (App. at 287 ¶15.)

The ancillary agreements states: "David and Elizabeth are executing a partial revocation of their antenuptial agreement to make it clear that neither party will claim a marital interest in property of the other or claim any interest in property of the other." (App. at 294 Ex. E ¶2.) The Partial Revocation and ancillary agreement collectively reflect all the terms of Elizabeth's and David's instructions. (App. at 287 ¶14; App. at 289 Ex. A, Ex. C, & Ex. G.)

On August 4, 2017, Ruesch revised the Partial Revocation. (App. at 287 ¶9; App. at 292 Ex D.) On August 8, 2017, Ruesch met with David at Ruesch’s office regarding the Partial Revocation, (App. at 292 Ex. D), and the ancillary agreement, (App. at 294 Ex. E). (App. at 287 ¶8.) On September 6, 2017, Ruesch’s legal assistant sent a letter, (App. at 296 Ex. F), to David concerning the status of the Partial Revocation, and their step-grandson’s deed referred to in ancillary agreement. (App. at 287 ¶11.)

On December 6, 2017, Ruesch met with David. (App. at 287 ¶12.) Ruesch notarized David’s signature on the Partial Revocation, (App. at 292 Ex. D). (*Id.*) Elizabeth was not present at that time. (*Id.*) Ruesch never spoke with or met Elizabeth in connection with the Partial Revocation or the ancillary agreement. (App. at 288 ¶16.)

Elizabeth admitted that she signed the Partial Revocation and ancillary agreement in front of a Notary Public. (App. at 165:22-166:10, 167:2-3, 168:25-169:3, 170:23-171:21, 176:12-17, 179:5-25, 184:6-185:7, 187:3-5, 188:24-189:2 (Elizabeth’s Depo. Tr. 26:22-27:10, 28:2-3, 29:25-30:3, 31:23-32:21, 37:12-17, 40:5-25, 45:6-

46:7, 48:3-5, 49:24-50:2); App. at 165 Ex. 2; App. at 184 Ex. 3.)

Elizabeth did not consider the ancillary agreement to be deceptive.

(App. at 210:16-211:3 (Elizabeth's Depo. Tr. 71:16-72:3).)

In the years following the Partial Revocation, David made several inter vivos transfers to Elizabeth in reliance on the validity of the Partial Revocation. David issued the checks as provided for in the ancillary agreement, (App. at 294 Ex. E), and/or in Elizabeth's proposal, (App. at 289 Ex. A):

- Check 1409; 6/6/17 - \$1500 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants' Memorandum in Support of Resistance to Plaintiff's Motion for Summary Judgment, for "to help her cover and to be treated as a loan for any settlement" (App. at 247 Ex. 13)
- Check 1415; 6/16/17 - \$800 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants' Memorandum in Support of Resistance to Plaintiff's Motion for Summary Judgment, for "housing allowance" (App. at 235 Ex. 8)
- Check 1452; 7/2/17 - \$4826 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants' Memorandum in Support of Resistance to Plaintiff's Motion for Summary Judgment, for "settlement agreement and her given up dower rights" (App. at 249 Ex. 14)
- Check 1021; 8/15/17 - \$3,000 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants' Memorandum in Support of Resistance to Plaintiff's Motion for Summary Judgment, for "on our

agreement re: my paying for dower rights” (App. at 246 Ex. 12)

- Check 1688; 8/16/17 - \$4,000 to Farmers Trust Bank signed by David Roberts, as set forth in Defendants’ Memorandum in Support of Resistance to Plaintiff’s Motion for Summary Judgment, for “to Durant project as per agreement, page 2 line one” (App. at 241 Ex. 10)
- Check 1028; 9/21/17 - \$2,000 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants’ Memorandum in Support of Resistance to Plaintiff’s Motion for Summary Judgment, for “to repay her loan from ex-husband Harry” (App. at 232 Ex. 7)
- Check 1040; 10/24/17 - \$1,500 to Elizabeth Roberts signed by David Roberts, as set forth in Defendants’ Memorandum in Support of Resistance to Plaintiff’s Motion for Summary Judgment, for “on our agreement re: Dower Rights, etc.” (App. at 239 Ex. 9)

Those checks establish that Elizabeth made the initial settlement proposal six months before the Partial Revocation and the ancillary agreement were signed, that checks were issued per the proposal, discussions, and the subsequent agreements throughout the six months, and there was no question that Elizabeth knew she was giving up her rights as stated in the Partial Revocation agreement and the checks Elizabeth cashed. Elizabeth admitted that when David fulfilled an obligation as detailed in paragraph 4 of the ancillary agreement, she would write “PD” meaning “paid”, on the ancillary agreement. (App. at 201:3-203:1

(Elizabeth’s Depo. Tr. 62:3-64:1).) David accomplished his obligations required by the ancillary agreement. (App. at 232:24-283:4 (Elizabeth’s Depo. Tr. 93:24-144:4); see App. at 232-274 Exs. 7-24.)

Argument

1. Preservation of error.

Elizabeth states: “All matters at issue in this appeal were timely appealed and properly preserved.” (Appellant’s Br. p12.) Timely filing a notice of appeal does not preserve error for appellate review. *State v. Lange*, 831 N.W.2d 844, 846-47 (Iowa Ct. App. 2013); see Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (2006) (“However error is preserved, it is not preserved by filing a notice of appeal. While this is a common statement in briefs, it is erroneous, for the notice of appeal has nothing to do with error preservation.”). Regardless, David agrees that the issues Elizabeth raises in her brief are preserved for appellate review. See *In re Marriage of Gensley*, 777 N.W.2d 705, 718-19 (Iowa Ct. App. 2009) (holding that an issue not

presented to the trial court will not be considered for the first time on appeal).

2. Standard of review

Elizabeth appeals the district court's grant of summary judgment against her. Iowa's appellate courts "review a grant of summary judgment for correction of errors at law." *Susie v. Family Health Care of Siouxland, P.L.C.*, 942 N.W.2d 333, 336 (Iowa 2020). There were no disputed facts regarding the Partial Revocation – both parties admitted to the existence of the Partial Revocation and Elizabeth admitted to signing it – so the only issue was whether the Partial Revocation was valid as a matter of law. When the facts are undisputed and the only issue is what legal consequence flows from the facts, summary judgment should be granted. *Kennedy v. Zimmerman*, 601 N.W.2d 61, 63 (1999).

3. The district court properly held that the parties' Partial Revocation of their premarital agreement is authorized by Iowa law.

The parties do not dispute the existence and validity of the Premarital Agreement. (App. at 9.) The parties do not dispute the existence of the Partial Revocation, (App. at 54), but dispute its

legal validity – David argues the Partial Revocation is legally valid and enforceable, Elizabeth argues it is not.

Iowa law favors premarital agreements and Iowa courts liberally construe such agreements to carry out the intention of the parties. *In re Marriage of Christensen*, 543 N.W.2d 915, 918 (Iowa Ct. App. 1995). “The purpose of such contracts is to fix the interests of the respective parties in the property of the other.” *In re Marriage of Pillard*, 448 N.W.2d 714, 715 (Iowa Ct. App. 1989). “Antenuptial contracts ... are to be liberally construed to carry out the intentions of the parties. ... [A]ntenuptial agreements differ in no way from other normal contracts. [Iowa courts] construe, consider, and treat them the same as [courts] do ordinary contracts.” *Id.* (citations omitted); see *In re Marriage of Gonzalez*, 561 N.W.2d 94, 96 (Iowa Ct. App. 1997) (“We treat such agreements in the same manner as ordinary contracts.”); *In re Marriage of Barten*, No. 22-0084, 2023 WL 2395324, at *5 (Iowa Ct. App. Mar. 8, 2023) (same).

A. Iowa Code section 596.7 permits parties to a premarital agreement to partially revoke the agreement.

Because David and Elizabeth entered into their Premarital Agreement after January 1, 1992, Iowa courts must apply Iowa

Code chapter 596 in determining its validity and how to enforce it. *In re Marriage of Erpelding*, 917 N.W.2d 235, 238 (Iowa 2018); *In re Marriage of Spiegel*, 553 N.W.2d 309, 316 (Iowa 1996); see Iowa Code § 596.12 (2023); see also *In re Marriage of Shanks*, 758 N.W.2d 506, 511 (Iowa 2008). It is undisputed that the parties executed the written Partial Revocation on December 6 and 7, 2017. (App. at 54.)

(1) The plain language of section 596.7 demonstrates that “partial” revocations are permitted.

Iowa Code chapter 596 expressly permits parties to a premarital agreement the power to revoke a premarital agreement. See Iowa Code § 596.7 (2023). To do so, the revocation must be by “written agreement signed by both spouses. The revocation is enforceable without consideration.” Iowa Code § 596.7(1) (2023). Section 596.7 does not state whether the revocation may be in whole or in part. Elizabeth argues that “revocation” can only mean “in whole” never “in part” because Iowa Code chapter 596 never mentions the word “partial”. (Appellant’s Br. p13.) Thus, Elizabeth claims that a “partial revocation’ by any other name is simply an amendment”, and since amendments have been disallowed by

Hansen, a partial revocation is disallowed. (See Appellant’s Br. p13-14 (citing *In re Marriage of Hansen*, No. 17-0889, 2018 WL 4922992, at *5 (Iowa Ct. App. Oct. 10, 2018).) Elizabeth’s argument is wrong, and the district court’s analysis properly establishes that Elizabeth is wrong.

First, premarital agreements are contracts and are “construed in the same manner as ordinary contracts.” *Shanks*, 758 N.W.2d at 511; *Barten*, 2023 WL 2395324, at *5. As the district court correctly noted, “revocation” in the context of a contract is used when withdrawing an offer prior to acceptance. (App. at 395 (citing REVOCATION, *Black’s Law Dictionary* (11th ed. 2019)).) In the context of premarital agreements and section 596.7, the term “revocation” is more akin to a “rescission” which is an “agreement by contracting parties to discharge all remaining duties of performance and terminate the contract.” (App. at 395 (citing RESCISSION, *Black’s Law Dictionary* (11th ed. 2019))); see also Iowa Code § 633.284 (2023) (detailing how a testator may unilaterally revoke a will). Further demonstrating why “revocation” in section 596.7 is more akin to “rescission” is because a premarital

agreement may be revoked only by mutual assent, while a will may be revoked unilaterally by the testator.

The district court's analysis continues:

It is clear that a premarital agreement may be revoked under both Chapter 596 and the common law, but it is unsettled whether parties may execute partial revocations. There is no language in Chapter 596 either permitting or prohibiting partial revocations, and unlike amendments, there is no purposeful exclusion of partial revocations by the legislature evidencing a desire to repeal the common law. Therefore, the Court must look to the common law to see whether partial revocations, or partial rescissions, are permitted.

(App. at 397-398.)

Initially, Elizabeth's reliance on *Hansen* is misplaced. *See* 2018 WL 4922992, at *5. As the district court noted:

Typically, "statutory provisions do not repeal the common law by implication unless the intention to do so is plain." *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 568 (Iowa 1976). Chapter 596 has no language that expressly negates the common law regarding premarital agreements and the stated purpose of the Chapter is simply "to make uniform the law with respect to premarital agreements." Iowa Code section 596.2.

The *Hansen* Court [concluded when applying chapter 596, a] premarital agreement "may not be amended after marriage, ... it may be revoked, abandoned, or the rights thereunder waived." This statement is somewhat puzzling as the right to abandon or waive contractual

rights are not granted by Chapter 596, but stem from the common law.

(App. at 397 (citing *Hansen*, 2018 WL 4922992).) Therefore, common law applies unless expressly negated by statutory law.

“Parties to a contract may, of course, rescind it by mutual agreement.” *Novak Equip., Inc. v. Hartl*, 168 N.W.2d 924, 926 (Iowa 1969). “Ordinarily, rescission must be of the whole contract, though there may be partial rescission in case of severable provisions.” *Butler Mfg. Co. v. Elliott & Cox*, 211 Iowa 1068, 233 N.W. 669, 670 (1930); *see Allen v. Pegram*, 16 Iowa 163, 173–74 (1864). “Whether a contract is entire or severable depends upon the intention of the parties, manifested by their acts and by the circumstances of each particular case.” *Inman Mfg. Co. v. Am. Cereal Co.*, 124 Iowa 737, 741, 100 N.W. 860, 861 (1904). The district court properly concluded that David and Elizabeth intended to make the separate provisions of their premarital agreement severable. (*See App. at 48 ¶9.*)

Because 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. *See* § 596.7(1).

(2) *Proposed yet unadopted legislation is not binding on Iowa courts and is not evidence that section 596.7 was meant to ban amendments, partial revocations, or otherwise.*

To invalidate the Partial Revocation, Elizabeth cites legislation that was proposed but never passed let alone adopted into law. (Appellant’s Br. p15-16.) In fact, the cited legislation never made it out of its assigned subcommittee. *See* H.R. 2234, 83rd Leg., 2nd Sess. (Iowa 2010) (legislative history); S.S.B. 1196, 85th Leg., 1st Sess. (Iowa 2013) (legislative history). Elizabeth fails to cite any legal authority suggesting that Iowa courts are bound by proposed legislation.

Elizabeth also argues: “Since the enactment of the IUPAA, the Iowa Supreme Court has never found that ‘partial’ revocations or amendments are allowed.” (Appellant’s Br. p16.) In same respect, the Iowa Supreme Court has never found that ‘partial’ revocations or amendments are *disallowed*. Permitting a partial revocation is not a “massive loophole” in chapter 596. Rather, validating a partial revocation is supported by decades of Iowa’s contract law jurisprudence. *See Butler Mfg. Co.*, 233 N.W. at 670 (Iowa 1930); *Allen*, 16 Iowa at 173–74.

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

Elizabeth refuses to reconcile her paradoxical argument. Though revocations are expressly permitted by section 596.7, Elizabeth argues that revocations in whole are permitted but not in part. For her argument to succeed, she claims partial revocations are not revocations but amendments. Then, as her argument goes, since *Hansen* disallowed amendments, the partial revocation must be invalid. (*See Appellant's Br.* p15-16.) Elizabeth's argument is flawed and not supported by case law as the district court correctly found.

First, amendments are not expressly prohibited by section 596.7. However, the *Hansen* court concluded that amendments to premarital agreements are impermissible because of the differences between section 596.7 and the IUPAA's suggested language. *See Hansen*, 2018 WL 4922992, at *5-*6. When considering how chapter 596 governs a premarital agreement, Iowa courts, in "the absence of instructive Iowa legislative history, ... look to the comments and statements of purpose contained in the [UPAA] to

guide [its] interpretation of the comparable provisions of” Iowa’s version of the UPAA. *Shanks* at 512. “A primary goal of the UPAA was to increase the certainty of enforceability of premarital agreements.” *Id.* at 511-12 (citing UPAA Prefatory Note at 369).

The UPAA, as drafted by the National Conference of Commissioners on Uniform State Laws in 1983, contained a provision expressly permitting amendments to a premarital agreement: “After marriage, a premarital agreement may be *amended or* revoked only by a written agreement signed by the parties. The *amended agreement or* the revocation is enforceable without consideration.” § 5. Amendment, Revocation, Unif. Premarital Agreement Act § 5, U.L.A. Premari. Agree. § 5 (emphasis added). However, when adopting the UPAA, the Iowa Legislature did not include words regarding amendments. *See* Iowa Code § 596.7.

After marriage, a premarital agreement may be revoked only as follows: ... By a written agreement signed by both spouses. The revocation is enforceable without consideration.

§ 596.7(1). That omission is not conclusive.

By deleting the “amended” reference of the UPAA, the legislature left the matter of amendments to the common law. Elizabeth argues that by deleting the language of the UPAA regarding amendments, the legislature intended to make such amendments unenforceable. But, if the legislature intended to prohibit amendments, it could have easily stated that post-nuptial amendments are void. Instead, the legislature excised the proposed amendment UPAA language and did not include it in section 596.7. Thus, chapter 596 generally and section 596.7 specifically are silent on the topic of amendments. The more logical reason the legislature excised the amendment language when converting the UPAA into chapter 596 is that the legislature did not want to upend decades of well-established Iowa contract law about amendments.

According to well-established caselaw, premarital agreements are freely amendable. Since the adoption of Iowa Code chapter 596, Iowa’s appellate courts continue to construe, interpret, and enforce premarital agreements as ordinary contracts. *See Gonzalez*, 561 N.W.2d at 96 (“We treat such agreements in the same manner as ordinary contracts.”); *Barten*, 2023 WL 2395324, at *5; *see also*

Shanks, 758 N.W.2d at 510–11 (Iowa 2008) (citing *Spiegel*, 553 N.W.2d at 316).

Antenuptial contracts — designated in this record as prenuptial contracts — are in no way different from any other ordinary contract. They are to be considered, construed and treated as are contracts in general. Any executory contract, when the rights of others are not involved, may be rescinded altogether or modified, by the mutual consent of the parties. Either party may waive any right thereunder. Those who are qualified to make an antenuptial or other contract are likewise qualified, by mutual consent to eliminate or modify any part thereof, or to unmake the contract altogether, or to substitute a new contract.

O'Dell v. O'Dell, 238 Iowa 434, 455, 26 N.W.2d 401, 412 (1947) (citations omitted).

Elizabeth claims that Iowa Code chapter 596 and caselaw instruct courts to protect vulnerable parties. *See Erpelding*, 917 N.W.2d at 244. Elizabeth then posits that banning postnuptial amendments somehow protects vulnerable parties. (Appellant's Br. p19-20.) Assuming *arguendo* that Elizabeth's position on that point is correct, Elizabeth conveniently ignores that the trial record is devoid of any evidence that Elizabeth is such a "vulnerable" party. (*See id.*) Regardless, that claim is a red herring and inapplicable to

the district court's correct analysis to validate the Partial Revocation that Elizabeth knowingly and voluntarily signed.

Elizabeth then argues: "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?" That argument is wrong. Section 596.7 expressly provides a "regulatory structure" by providing that revocations are only valid if (1) in writing and (2) signed by both spouses. Iowa Code § 596.7(1). The partial revocation here satisfies both statutory elements.

Elizabeth next makes the bald assertion: "The plain meaning of the statute provides *absolute protection* to Iowa spouses against 'partial revocations' and amendments during the marriage by forbidding them." (Appellant's Br. p20 (emphasis added).) Yet, provides no legal citation. A statute that does not mention the word "amendment" or any derivative thereof cannot provide "absolute protection".

4. The partial revocation meets basic contractual requirements and is valid.

Elizabeth argues that, if chapter 596 does not apply to the determination of the validity of the partial revocation, then the “basic contractual requirements” of offer, acceptance and consideration apply. (Appellant’s Br. p21.) Then, as her argument goes, the Partial Revocation lacks consideration, so it is invalid. (*Id.*) Elizabeth’s argument is wrong on several levels.

First, the premise of Elizabeth’s argument is wrong. Iowa Code chapter 596 applies to the questions of validity and enforcement of the parties’ premarital agreement. *Erpelding*, 917 N.W.2d at 238; *Spiegel*, 553 N.W.2d 309, 316 (Iowa 1996); see Iowa Code § 596.12 (2023); see also *Shanks*, 758 N.W.2d at 511. Revocations are permitted by Iowa Code section 596.7(1), which provides such revocations are “enforceable without consideration.” § 596.7(1).

Second, assuming *arguendo* the Partial Revocation requires consideration, Elizabeth ignores that Elizabeth and David executed an “Agreement” simultaneously with the Partial Revocation. (App. at 294 Ex. E.) The parties entered that agreement, which set forth

significant property and cash transfers between them, as consideration for the execution of the Partial Revocation. (*Id.*) Paragraph 2 expressly acknowledges the Partial Revocation: “David and Elizabeth are executing a partial revocation of their antenuptial agreement ...” (*Id.* ¶2.) So, Elizabeth’s claim that the Partial Revocation is invalid because it lacks consideration is without merit.

5. The Partial Revocation is neither unconscionable nor violates public policy.

Even with the adoption of Iowa Code chapter 596, Iowa courts still review premarital agreements like ordinary contracts. *In re Estate of Rhoten*, No. 18-0753, 2019 WL 1056831, at *2 (Iowa Ct. App. Mar. 6, 2019).

Our courts examine contract signing with the precept that a person would “hardly sign an important document without reading it.” In the absence of fraud or mistake, a person is bound by their signature. Ignorance of the contents of an instrument does not ordinarily affect the liability of one who signs it. “It is also the settled rule of law that if a party to a contract is able to read, has the opportunity to do so, and fails to read the contract, he cannot thereafter be heard to say that he was ignorant of its terms and conditions, for the purpose of relieving himself from its obligation.”

Gouge v. McNamara, 586 N.W.2d 710, 713 (Iowa Ct. App. 1998) (citations omitted). In her deposition, Elizabeth admitted she signed the Partial Revocation and ancillary agreement. (App. at 165:22-166:10, 167:2-3, 168:25-169:3, 171:16-21 176:12-17, 179:5-25, 184:6-185:7, 187:3-5, 188:24-189:2 (Elizabeth’s Depo. Tr. 26:22-27:10, 28:2-3, 29:25-30:3, 32:16-21, 37:12-17, 40:5-25, 45:6-46:7, 48:3-5, 49:24-50:2); App. at 165 Ex. 2 & App. at 184 Ex. 3.)

Chapter 596 provides three statutory grounds to invalidate the enforcement of a premarital agreement:

A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:

- a. The person did not execute the agreement voluntarily.
- b. The agreement was unconscionable when it was executed.
- c. Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse.

Iowa Code § 596.8(1) (2023). Elizabeth, as “the person against whom enforcement is sought”, has the burden to prove any of those

grounds. *Id.* Elizabeth argues the Partial Revocation was unconscionable. § 598(1)(b).

Interpreting subsection 596.8(1)(b) to invalidate a premarital agreement because it was “unconscionable”, the *Shanks* Court divided “unconscionability” into two subsets: (1) “procedural unconscionability”, which it defined as the “employment of ‘sharp practices[,] the use of fine print and convoluted language,’ as well as ‘a lack of understanding and an inequality of bargaining power’”; and (2) “substantive unconscionability”, which “focuses on the ‘harsh, oppressive, and one-sided terms’ of a contract.” *Shanks*, 758 N.W.2d at 515. Notably, “the concept [of unconscionability] is not a means by which a party may escape the requirements of an unfavorable contract after experiencing buyer’s remorse.” *Id.* at 515-16. “Thus, absent an unconscionable bargaining process, a court should be hesitant to impose its own after-the-fact morality judgment on the terms of a voluntarily executed premarital agreement.” *Id.* at 516.

A. The Partial Revocation is not procedurally or substantively unconscionable.

Elizabeth argues: “Elizabeth gives up her strongest contractual protection in paragraph 8 of the antenuptial contract while receiving nothing in return.” (Appellant’s Br. p22.) That is wrong because the trial record shows the opposite. Elizabeth and David executed the ancillary agreement simultaneously with the Partial Revocation. (*See App. at 294 Ex. E.*) Elizabeth conveniently fails to mention the ancillary agreement because she knows that cancels her argument. Elizabeth knew what she wanted and what she was doing. (*See App. at 289 Ex. A.*) She sought the terms of the Partial Revocation because of her health concerns and fear she would die before David died. (*Id.*) In exchange for the rights she waived in the Partial Revocation, she received substantial compensation in the ancillary agreement. Elizabeth received the benefit of her bargain with David. Now, she wants to have her cake and eat it too: receive substantial property from the Estate by nullifying the Partial Revocation while keeping the significant property and cash she received in the ancillary agreement. That is

inequitable and impermissible. (*See* App. at 82 (counterclaiming for conversion and unjust enrichment).)

B. The Partial Revocation does not violate public policy.

Despite remaining married until David's death, Elizabeth argues that this court should invalidate the Partial Revocation because it violates established Iowa's public policy of preserving marriages. (Appellant's Br. p23.) As the district court correctly noted:

The "power to invalidate a contract on public policy grounds must be used cautiously and exercised only in cases free from doubt." *DeVetter v. Principal Mut. Life Ins. Co.*, 516 N.W.2d 792, 794 (Iowa 1994). "It is 'not necessary that the contract actually cause the feared evil in a given case; its tendency to have that result is sufficient.'" *Rogers v. Webb*, 558 N.W.2d 155, 157 (Iowa 1997) (quoting *Walker v. American Family Mut. Ins. Co.*, 340 N.W.2d 599, 601 (Iowa 1983)).

(App. at 402-403.) Elizabeth argues that in "the dynamic envisioned by the Defendants, their attorneys, and the district court, spouses must be inherently mistrustful of each other." (Appellant's p23.) Yet, she cites no facts supporting that claim.

Elizabeth conveniently ignores that she, not David, sought the Partial Revocation in exchange for property and cash. Elizabeth

admitted that she did not feel pressured by David when she signed the Partial Revocation. (App. at 177:4-11; *see* App. at 178:19-179:4 (“I could have [asked for more time to consider the Partial Revocation], but again, why would I have?”).) She admitted waiting at least a day between David presenting her with the agreements and her signing them in front of a Notary Public. (App. at 179:5-182:2, 182:9-15 (Elizabeth’s Depo. Tr. 40:5-43:2, 43:9-15).) She cites no facts that David used the Partial Revocation as leverage to obtain something else. In fact, the face of the Partial Revocation, as well as the ancillary agreement showing the parties’ bargain to exchange property and money, shows that this was a mutual pact that benefited both parties. Now that David has died and is unable to refute Elizabeth’s baseless allegations, this court must look at the Partial Revocation and the agreement. On their face, the Partial Revocation and the ancillary agreement are not violative of public policy and this court should affirm.

6. The signed revocation and the acts of David and Elizabeth were an intentional relinquishment/waiver of known rights.

The district court succinctly stated:

Assuming for the sake of argument that partial revocations were not permitted, the *Hansen* Court stated that parties could still waive rights granted under a premarital agreement. Waiver is “the voluntary or intentional relinquishment of a known right.” *Scheetz v. IMT Ins. Co. (Mut.)*, 324 N.W.2d 302, 304 (Iowa 1982) (quoting *Travelers Indemnity Co. v. Fields*, 317 N.W.2d 176, 186 (Iowa 1982)). It may be “shown by the affirmative acts of a party, or can be inferred from conduct that supports the conclusion waiver was intended.” *Id.* The partial revocation identifies two rights: the right of the surviving spouse to take a one-third net equity in real property of the deceased spouse, and Plaintiff’s right to be named a tenant in common and guaranteed corresponding interest in real property for which Plaintiff had financially contributed. The partial revocation not only is an affirmative act to nullify those rights, the document also states that the parties have acted in a manner inconsistent with those rights supporting an inference of intent to waive. The signed partial revocation certainly appears to the Court as an intentional relinquishment of known rights on behalf of the Plaintiff.

(App. at 398-399.) The district court continued: “In the alternative, the Court finds that the Plaintiff and David executed waivers of the two rights named in the partial revocation.” (App. at 400.)

Not only are the waiver of the parties evident in the written words of the Partial Revocation, the waivers are clear from all the other affirmative acts of Elizabeth:

- Elizabeth’s written letter, (App. at 289 ¶3, App. at 289 Ex. A.);

- Elizabeth discussed the terms at length, (App. at 226:20-25 (Elizabeth Depo. 87:20-25));
- Elizabeth proposed additional terms, (App. at 287 ¶13, App. at 294 Ex. E);
- Elizabeth signed the two agreements;
- After signing the agreements, Elizabeth accepted substantial consideration by way of checks made out to her which specifically stated they were for payment for the “settlement” and “release of her dower rights”.

Therefore, this Court can find that the signed revocation and acts of the parties show an intentional waiver of known rights.

7. There is a dispute of material fact as to David’s counterclaims, and those counterclaims are not moot and should be reinstated if the appellate court invalidates the Partial Revocation.

In her second motion for summary judgment, Elizabeth misrepresents the Estate’s counterclaims. The district court found that the counterclaims were moot because each counterclaim contains the same contingent language, “[i]f the Court finds the Partial Revocation invalid or void for any reason ...” (*See* App. at 82.) When the district court found the Partial Revocation valid, the Estate’s counterclaims were moot. (App. at 403.) If the appellate court invalidates the Partial Revocation, then the Estate’s counterclaims should be reinstated.

Through its counterclaims, the Estate contends that, should the Partial Revocation be determined to be invalid, all the consideration in the agreement and the subsequent transfers of approximately \$900,000 of property in 2020 and 2021 should be returned to the Estate because they were transferred in consideration of, i.e., in reliance on, the effectiveness and validity of the Partial Revocation, and not in consideration for the partial revocation agreement as Elizabeth contends.

Elizabeth and David executed an “Agreement” simultaneously with the Partial Revocation. (App. at 294 Ex. E.) The parties entered that agreement, which set forth significant property and cash transfers between them, as consideration for the execution of the Partial Revocation. (*Id.*) Paragraph 2 expressly acknowledges the Partial Revocation: “David and Elizabeth are executing a partial revocation of their antenuptial agreement ...” (*Id.* ¶2.) As part of this agreement, David was to transfer \$65,000 (with various credits applied to debts paid directly by David) to Elizabeth to clear up certain outstanding debts and have money to visit family. (*Id.*) This agreement also established a monthly

allowance for household expenses of \$800 per month. (*Id.*) Elizabeth admits this was an increase from her previous monthly allowance of \$560. (App. at 203:23 (Elizabeth’s Depo. Tr. 64:23).) This agreement is also supported by the proposal letter Elizabeth drafted to David and David’s attorney. (App. at 289 Ex. A.) These documents show that the parties had discussions and negotiations surrounding and leading up to the execution of the Partial Revocation. The enforcement of the ancillary agreement is a genuine issue of material fact. If this court invalidates the Partial Revocation, then genuine issues of material fact as to how the ancillary agreement, which was based on the validity of the Partial Revocation, unjustly enriched Elizabeth is ripe for determination by the district court.

Elizabeth also contends that property and cash she received after the Partial Revocation and ancillary agreement are gratuitous. Incredibly, Elizabeth argues: “There is no presumption that these transfers are part of a contract formed between the spouses.” (Appellant’s Br. p26.) To agree with that statement,

Elizabeth pretends that the ancillary agreement she signed does not exist.

Elizabeth next points to a recognized presumption of gratuity between family members. (*See* Appellant's Br. p26 (citing *Ferris v. Barrett*, 250 Iowa 646, 95 N.W.2d 527 (Iowa 1959).) However, this is a presumption that may be overcome. First, the presumption of gratuity referenced is applicable to services rendered. *Ferris*, 250 Iowa at 650, 95 N.W.2d at 530. In this case, Elizabeth seeks to apply this presumption of gratuity to real estate transfers. Additionally, given the well documented history between Elizabeth and David (their original Premarital Agreement, the Partial Revocation, and subsequent real estate transferred to provide for Elizabeth), the present situation is altogether different than *Ferris*. Elizabeth concedes, should the Partial Revocation be found to be valid and enforceable, that the subsequent real estate transfers in 2020 and 2021 were, in fact, gratuitous. However, should the Partial Revocation be found to be invalid for any reason, the subsequent transfers were made on a mistake of law/fact, in reliance on an

invalid contract, and Elizabeth would be unjustly enriched, as plead in the Estate's counterclaims.

Next, in consideration of the transfers of real estate and money, Elizabeth and David were exchanging their separate property. Their Premarital Agreement, which Elizabeth wants enforced, clearly delineated between the parties' separate property. Paragraphs 1 and 2 of their Premarital Agreement expressly provide that each party's properties shall remain that party's his or her "personal estate". Thus, the agreement transferring property between the parties was a negotiated contract between spouses exchanging their separate property. So, Elizabeth's claim that those exchanges were gratuitous are without merit. Even if they were gratuitous exchanges, David and Elizabeth agreed to exchange the property on the presumption that the Partial Revocation was valid and enforceable. If the Partial Revocation is invalid, then these exchanges or transfers were made on a mistake of law/fact, in reliance on an invalid contract, and Elizabeth was unjustly enriched.

Conclusion

Elizabeth is an intelligent and sophisticated person. She knew that signing contracts, agreements, etc., carried consequences. She does not challenge the premarital agreement which granted both parties significant rights. Yet, she claims she should be allowed to escape her voluntary choice to execute the Partial Revocation and ancillary agreement. Because the facts do not support invalidating the Partial Revocation on unconscionable or public policy grounds, she argues that Iowa Code chapter 596 does not permit a partial revocation despite the Iowa Code expressly permitting parties to revoke a premarital agreement without distinguishing between whole and partial revocations.

The district court's well-reasoned order justifiably held that Iowa law permits parties to a premarital agreement to partially revoke their agreement. This court should affirm.

The district court declared David's counterclaims moot only because it found the Partial Revocation legally valid and enforceable. As such, if this court reverses the district court on the

validity of the Partial Revocation, then a genuine issue of material fact remains justifying the reinstatement of David's counterclaims.

Request for Oral Argument

Counsel for the Appellee requests to be heard in oral argument if the court grants oral argument to the appellant.

Respectfully submitted,

/s/ Andrew B. Howie

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Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 5th day of December 2023, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie

Andrew B. Howie

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/s/ Andrew B. Howie

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December 5, 2023

Date