# IN THE SUPREME COURT OF IOWA

No. 22-1905

## APPELLANT'S FINAL REPLY BRIEF

CONSERVATORSHIP OF JANICE GEERDES, BY LAURA JENKINS, CONSERVATOR,
Plaintiff (Appellee),

And concerning

ALBERT CRUZ,
Defendant (Appellant),

APPEAL FROM THE
Iowa District Court for Kossuth County Dist. Ct. No. EQCV027463
The Honorable Don E. Courtney

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## CERTIFICATE OF SERVICE

I, Shaun A. Thompson, hereby certify and remember that on the date stated in the file stamp on the cover of the Reply Brief, I filed the Reply Brief contained herein with the Clerk of the Supreme Court, 1111 E. Court, Des Moines, Iowa 50319 and all registered parties through EDMS in full compliance with the provisions of the Rules of Appellate Procedure.

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## CERTIFICATE OF COMPLIANCE

This reply brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains approximately 2,414 words, including everything, even the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This reply brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Bookman Old Style 14.

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# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**CASES**

## STATEMENT OF THE ISSUES

ISSUE I.

THE DISTRICT COURT ERRED WHEN IT FOUND UNDUE INFLUENCE THROUGH A CONFIDENTIAL RELATIONSHIP BETWEEN MR. CRUZ AND MS. GEERDES.

**AUTHORITIES:**

ISSUE II.

THE DISTRICT COURT ERRED WHEN IT FOUND THAT MS. GEERDES LACKED THE MENTAL CAPACITY TO EXECUTE THE QUIT CLAIM DEED ON JANUARY 9, 2019.

**AUTHORITIES:**

## ROUTING STATEMENT

This case involves straightforward application of existing law and so it should be transferred to the Court of Appeals.

## REPLY TO STATEMENT OF THE CASE and SUMMARY OF THE FACTS

The conservator stated that Janice did not have a memory or understanding of executing the deed and transferring her interest to Albert. This testimony did not come from Janice or an uninterested party; it came from Laura Jenkins, Janice's daughter seeking to undue to deed.

Janice understood the animosity her children had for Albert. App. p. 70. (Trial Tr. 190:20-191:3). Conservator Jenkin's statements about what Janice allegedly told her are self-serving. But even if Janice did deny knowledge of the deed to her daughter who did not like Albert, it is most likely that she did so to avoid conflict and not from actual confusion on her part. The disinterested CPA testified that Janice herself requested the deed be done and was of a similar mental state as she had been for the prior several years. (Trial Tr. 188-193).

References to exhibits four and five should be disregarded. Those exhibits were not offered nor accepted at trial. No expert designations were made related to those records nor were the records produced within a reasonable time period for Mr. Cruz to respond. The Plaintiff Conservator had the burden to prove lack of capacity and made no showing within a reasonable time before trial. The Plaintiff Conservator should not now be allowed to bring them in through the back door for consideration on appeal where they were not considered at trial for good reason.

The record did not demonstrate that Albert had influence over Janice's decision making regarding the lease between Janice and Mr. Laubenthal. The only influence Albert had was telling Janice that Mr. Laubenthal was paying over fifty-percent higher rent to another tenant and that he should pay Janice a similar price. (Trial Tr. 180-181). Mr. Laubenthal agreed to pay higher rent.

Certainly Mr. Laubenthal did not believe Janice lacked sufficient capacity for him to transact with her. Mr.

Laubenthal's own actions in dealing with Janice demonstrate that he did not believe Janice lacked capacity.

## REPLY ARGUMENT

ISSUE I.

**THE DISTRICT COURT ERRED WHEN IT FOUND UNDUE INFLUENCE THROUGH A CONFIDENTIAL RELATIONSHIP BETWEEN MR. CRUZ AND MS. GEERDES.**

*ARGUMENT & SUPPORT:*

a. *Confidential Relationship*

The record was clear that Janice handled the business affairs while Albert handled manual labor. Albert is essentially illiterate. The cases cited as support by the conservator involved individuals who were active in managing the business affairs of the person alleged to be influenced. *Curtis v. Armogast*, 138 N.W. 837 (Iowa 1912), *In re Estate of Lundvall*, 46 N.W.2d 535 (Iowa 1951), *Curtis v. Armogas*t, 138 N.W. 837 (Iowa 1912), *First National Bank in Sioux City v. Curran*, 206 N.W.2d 317 (1951). Here, Albert never transacted business on Janice's account. He did not share a joint account with her nor was he a signatory on any account of hers. While he did ask her for money as reimbursement for his half interest in the hog

site, he never transacted business on her behalf nor managed any of her business affairs.

This case is more similar to the first case cited by Conservator, *In the Matter of the Estate of Clark*, 357 N.W.2d 34 (Iowa 1984). In *Clark*, the decedent had added the name of his son Ralph to his account after the death of his wife. In finding **no confidential relationship** the court stated:

> "There is no evidence that at that time or even at a later date that decedent was incapable of managing his affairs. Decedent and his wife had managed their affairs prior to her death. There is no evidence that at any time prior to the accounts being established in Ralph's name that Ralph had transacted any business for decedent or served in any type of advisory position to his father." *Id.* at 37.

This case is even further removed from a finding of a confidential relationship than *Clark*. Here, Albert was never added to any account of Janice nor did he ever transact or advise her in business.

*b. No Presumption*

Because the Conservator did not carry the burden to show a confidential relationship by clear, convincing, and satisfactory, there is no presumption of undue influence to rebut. *Else v.*

*Fremont Methodist Church*, 73 N.W.2d 50, 57 (1955). However, Albert at all times acted in good faith.

It was Janice who requested that a deed be created, granting Albert the remaining interest in the hog site; it was Janice who requested that an attorney be involved when Ms. Lemmon stated she would not draft a deed. (Trial Tr. 189-190). While Mr. Cruz drove Janice to these appointments, the record established that Mr. Cruz drove Janice nearly everywhere, including prior meetings with the CPA.

There is no evidence that Janice did not act of her own free accord. CPA Lemmon testified that Janice was of a similar mental capacity as all prior interactions. (Trial Tr. 188:12-21). In fact, Janice had such clarity of thought that she foresaw the issue her children would likely have in the future regarding the deed to Albert and handwrote CPA Lemmon a note stating that what she gave Albert was nobody's concern. App. p. 70. (Trial Tr. 191:4-193:14).

Throughout her brief, the Conservator makes mention of Albert exercising control over Janice's decision making; yet, there is not a single instance in or out of the record of Albert

having any control over Janice's business affairs or decision making.

ISSUE II.

THE DISTRICT COURT ERRED WHEN IT FOUND THAT MS. GEERDES LACKED THE MENTAL CAPACITY TO EXECUTE THE QUIT CLAIM DEED ON JANUARY 9, 2019.

*ARGUMENT & SUPPORT:*

The transfer of Ms. Geerdes' remaining half-interest in the hog site was a gift and not ordinary business nor a contract. There is no evidence that any consideration was required of Albert. Janice made it clear that she was deeding the remaining interest in the hog site to Albert because she wanted him to have it, not in consideration for some acts he would do in the future. (Trial Tr. 180-183).

While the deed was not a will, it was a gift disposition. This makes is more akin to a testamentary disposition than an ordinary business transaction or contract. *Costello v. Costello*, 186 N.W.2d 651, 654 (Iowa 1971). Therefore, a lower standard of mental competence is present. *Id.*

The Conservator attempts to paint this transaction as though it were a business contract; it is not.

Regardless of what standard of mental competence is used, Janice had the requisite mental capacity to execute the deed. CPA Lemmon, the most disinterested party, testified that Janice had similar mental capacity as she had in years past when the deed was executed. (Trial Tr. 188:12-21).

Contrary to the Conservator's claim, the medical records do not show deteriorated mental capacity. Only minor issues were found in medical records generated two years before the deed was executed. The recording indicated "mild cognitive-function disability; with deficits in working memory… Minor problems may be noticed in conversation. Mild impairments in working memory…" App. pp. 104-105 (These records are from 2017)(emphasis added). Despite these conditions existing in 2017, Janice continued to live on her own and conduct business on her own, including with Mr. Laubenthal.

While the Conservator testified that Janice denied knowledge of the deed when she was confronted with it, as previously discussed, Janice was aware of her children's animosity toward Albert and would have much incentive to not

disclose her knowledge of the deed. Furthermore, the Conservator's testimony was self-serving and no disinterested witness testified that Janice lacked knowledge of the deed after it was recorded.

The Conservator did not even attempt to designate or call any expert to opinion that Janice lacked capacity when the deed was executed in 2019. Unlike the cases primarily cited by the Conservator, *Daughton*, no medical professional offered any testimony that Janice lacked capacity. *Daughton v. Parson*, 423 N.W.2d 894, 896-897 (Iowa 1988)(discussing the doctor's testimony regarding the mental condition). The Conservator carried the burden to prove by clear, satisfactory and convincing evidence that Janice lacked capacity. *Groves v. Groves*, 692, 82 N.W.2d 124, 131 (1957).

The Conservator also claims that the deed was "clearly 'improvident'." The deed was not improvident. It is undisputed that Albert is like a son to Janice. Janice has 150 to 160 acres of additional farmland that she will presumably leave to her natural children worth considerably more than

her remaining half interest in the hog site. Janice knew that her children did not like Albert and would cause issues with the hog site, which is now Albert's home, if they were given control over her half of the hog site. Janice met with independent advisors, first her CPA, then an attorney selected by her CPA, in order to make sure that her children could not cause issue with Albert and the hog site. Afterward, she hand-wrote a note stating that it is not anybody's business how she helps Albert. App. p. 70. Rather than improvident, this line of actions shows considerable foresight and thought.

Plaintiff failed to carry its heavy burden of showing a lack of capacity by clear and convincing evidence.

*CONCLUSION*

In her proof brief, the Conservator did not present any authority demonstrating that a confidential relationship has ever been established upon a nearly illiterate friend who never conducted business on the other person's behalf or had any role as a business advisor.

No clear and convincing evidence was presented that Janice suffered more than minor impairment nor that she did

not have understanding of the gravity of the deed at the moment she executed the deed.

The trial court's judgment goes against the great weight of legal authority relating to confidential relationship and mental capacity and should be overturned.

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## REQUEST FOR ORAL ARGUMENT

Counsel for Appellant requests time to be heard orally on his appeal.

## COST CERTIFICATE

Albert Cruz hereby certifies that the cost of producing the above Reply Brief was $0.00.

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