IN THE SUPREME COURT OF IOWA

NO. 22-1801

WAPELLO COUNTY NO. ESPR007828

IN THE MATTER OF THE ESTATE OF JOHN EUGENE JOHNSTON

PEGGY JOHNSTON, Appellant

Appeal from Wapello County Iowa District Court, Hon. Gregory Milani, Judge, Eighth Judicial District

APPELLANT'S FINAL REPLY BRIEF AND ARGUMENT

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Statement of Issues for Review

I. WHILE THE PRESUMPTION OF A JOINT ACCOUNT BEING OWNED EQUALLY IS REBUTTABLE, THE APPELLEEE MUST SHOW THE AGREEMENT IS NOT EQUAL BY CLEAR AND CONVINCING EVIDENCE.

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Kettler v. Security Nat. Bk, 805 N.W.2d 817 (Iowa Ct App, 2011)

Appellees (John) argue that John had the right to remove more than 50% of the funds from the joint tenancy accounts because "his money" went into the accounts and therefore he could withdraw as he determined. This is

contrary to the law stated in Anderson v. Iowa Department of Human Services, 368 N.W.2d 104. John admits that a presumption exists that a joint tenancy account is equally-owned absent evidence to the contrary. The presumption of equal ownership can only be rebutted by clear and convincing evidence. This was stated in Anderson citing Fredrick v. Shorman, 259 Iowa 1050, 1058-1059, 147 N.W.2d 483-484 (Iowa 1966) "We held that the intent sought to be reached was that intent existing on execution of the deed, and the mother had to rebut the presumption of equal shares by clear and convincing evidence. Fredrick, 259 Iowa at 1058-59, 147 N.W.2d at 483-84." Anderson v. Iowa Dept. of Human Services, 368 N.W.2d 104 (Iowa 1985)

Peggy testified that she and John used the account as equal owners. There was no agreement shown by John to the contrary. There was no accounting of deposits or withdrawals. The Court should reject the argument that John was entitled to remove funds from the account in excess of one-half. John did not present clear and convincing evidence that the joint account was owned other than equally. The claim that John rebutted the presumption should be rejected. The Trial Court applied the wrong law to the case claiming that the case was a tortious conversion case and not a case governed by Anderson and Kettler v. Security National Bank, 805

N.W.2d 817 (Iowa Ct App, 2011)

I. APPELLEES INCORRECTLY ARGUE THAT THE SOURCE OF THE FUNDS FOR THE CERTIFICATES OF DEPOSIT WAS JOHN'S

Kettler v. Security National Bank, 805 N.W.2d 817 (Iowa Ct App, 2011)

John argues that the source of the funds used to purchase the $40,000 certificate of deposit was clearly John's money and cites a letter from the bank so indicating. John ignores the testimony of Peggy that the funds came from the sale of house that had been John and Peggy's residence and was sold to a grandson. John took the money and bought a short term certificate of deposit and continued to renew the certificate for successive periods. The bank employee correctly indicated that the certificate which provided the source of funds from which the certificate between John and his daughter was created was from another certificate that was part of the reinvestment of the funds that was kept in John's name. John argues that Peggy is claiming that John could not withdraw the funds. By the account agreement, John could do so, but if he removed more than his share he was liable to Peggy for the excess withdrawals. See Kettler v. Security National Bank, 805

N.W.2d 817 (Iowa Ct App, 2011)

Peggy testified that when she confronted John about the dealings with the funds. He stated that the money was his and he would do what he wanted, contrary to Peggy's interest in the accounts. (App. P. 60 line 6 –P. 61 line 2) John and Peggy lived in the house for several years and then sold it to the grandson. To indicate that because John took more than he should have from the joint account to open an account with his daughter proves that he was entitled to a greater share of the account is contrary to the facts and law presented at trial and in the trial brief. Peggy's claim should be sustained for one-half of the account of $40,000.00 and allowed to collect the funds from John's estate.

John purchased a trailer park in Eddyville at a sheriff's sale. The deed was put in John's name but the purchase funds were taken from the joint account and as they had done before, both worked on the property to make the business successful. (App. P. 77 line 14 – P. 79 line 14) When the property was sold, the funds were deposited in the joint account. John again took funds and bought a certificate of deposit and ultimately converted the certificate of deposit to John and his daughter. Peggy is not proposing that John cannot take the money, but as was stated earlier, John is liable to Peggy for her share of the account that John misappropriated. See Kettler

II. THE TRIAL COURT ERRED WHEN IT STATED THAT JOHN'S ACTIONS WERE EXCUSABLE DUE TO THE ACTIONS BEING ESTATE PLANNING.

The comment by the Trial Court that John's action in misappropriating Peggy's share of the account were excusable based upon John doing some estate planning is wrong and not supported by any evidence. John made a will (App. P. 5-8) and effectively tried to cut Peggy out of any inheritance completely. He tried to leave the house that Peggy and John lived in and owned in joint tenancy to the daughters. He tried to leave all other assets to his daughters excluding an adopted son and purposely excluding Peggy. If John was intending the will to reflect his plan, it is inconsistent that he takes $110,000 and creates a joint tenancy account with one daughter to the exclusion of the other daughters.

When the Trial Court indicated in the oral order that estate planning justified John's actions and that estate planning was a basis upon which the Trial Court dismissed Peggy's claim, error was committed. John did not offer any evidence that there was any estate planning considerations to John's actions. This Court could conclude that John's plan was to deprive Peggy of anything after 35 years of marriage.

CONCLUSION

The Trial Court erred when it applied the wrong law to Peggy's claim. The case was not based upon a tort of conversion. It was based upon John's misappropriation of funds from a joint account to Peggy's detriment. John's effort to show that there was an agreement between the parties that John had the right to more than 50% of the account fails for lack of clear and convincing evidence. John is contending that the fact that title to the ultimate asset that Peggy was able to track in John's maneuvering of funds means that it was his property and that the Court should not look at the source of the funds. John sold a house owned in joint tenancy and took the funds as his own. John bought a trailer park with joint funds and both parties worked on the park and when it was sold, he took the funds and bought a certificate of deposit ultimately in his name and his daughter's name depriving Peggy of her share of the account. Directing a verdict against Peggy constitutes error by the Trial Court which this Court can and should set right.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 3,975 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This 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 Microsoft Word 2019 in font size 14 of Times New Roman.

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CERTIFCATE OF SERVICE AND CERTIFICATE OF FILING

The undersigned hereby certifies that a true copy of the Claimant-Appellant's Reply Brief was served March 14, 2023, upon the following parties:

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by electronic notification from the Iowa Supreme Court for the CM/ECF system.

The undersigned further certifies that on March 14, 2023, I will electronically file this document with the Clerk of the Iowa Supreme Court.

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