IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-1845
Delaware County Case No. EQCV008882

MARK FINK and STACEY FINK,

Plaintiffs-Appellees,

v.

DONALD LAWSON and LINDA LAWSON,

Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT FOR DELAWARE COUNTY
THE HONORABLE MARGARET L. LINGREEN

APPELLANTS' BRIEF

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DONALD AND LINDA LAWSON

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it presents an issue of first impression under Iowa law as to whether this Court should adopt and apply the "control test" when evaluating easements by implication. IOWA R. APP. P. 6.1101(2)(c) and (f).

NATURE OF THE CASE

This appeal arises from a quiet title action tried in equity to the district court in August of 2023. ([D0355], Decree 09/26/2023 at p. 1). The trial court issued a Judgment Decree quieting title in favor of Mark and Stacey Fink ("the Finks"). This appeal was subsequently initiated by Donald and Linda Lawson ("the Lawsons"). ([D0370], Notice of Appeal).

STATEMENT OF FACTS

For more than twenty years, the Lawsons lived peaceably on their land enjoying the benefits of a written and recorded easement agreement providing them access to the Maquoketa River/Lake Delhi recreational area. ([D0355], Judgment Decree dated 09/26/2023). Unfortunately for them, in April of 2021, the Finks purchased the servient parcels between the Lawsons' home and the water. *Id.* Since that time, the Finks have tried everything in their power to block the Lawsons' continued access to the water, including the erection of temporary barriers and the commencement of the instant litigation against them. *Id., (see*

also, Trial Testimony of Land Surveyor Expert Adam Recker, Transcript pp. 438 – 445). The Finks successfully convinced the trial court to preclude the Lawsons from having any further access to the Maquoketa River due to certain defects identified in the Lawsons' written and recorded easement. *Id.* This appeal has ensured. ([D0370], Notice of Appeal 11/10/2023).

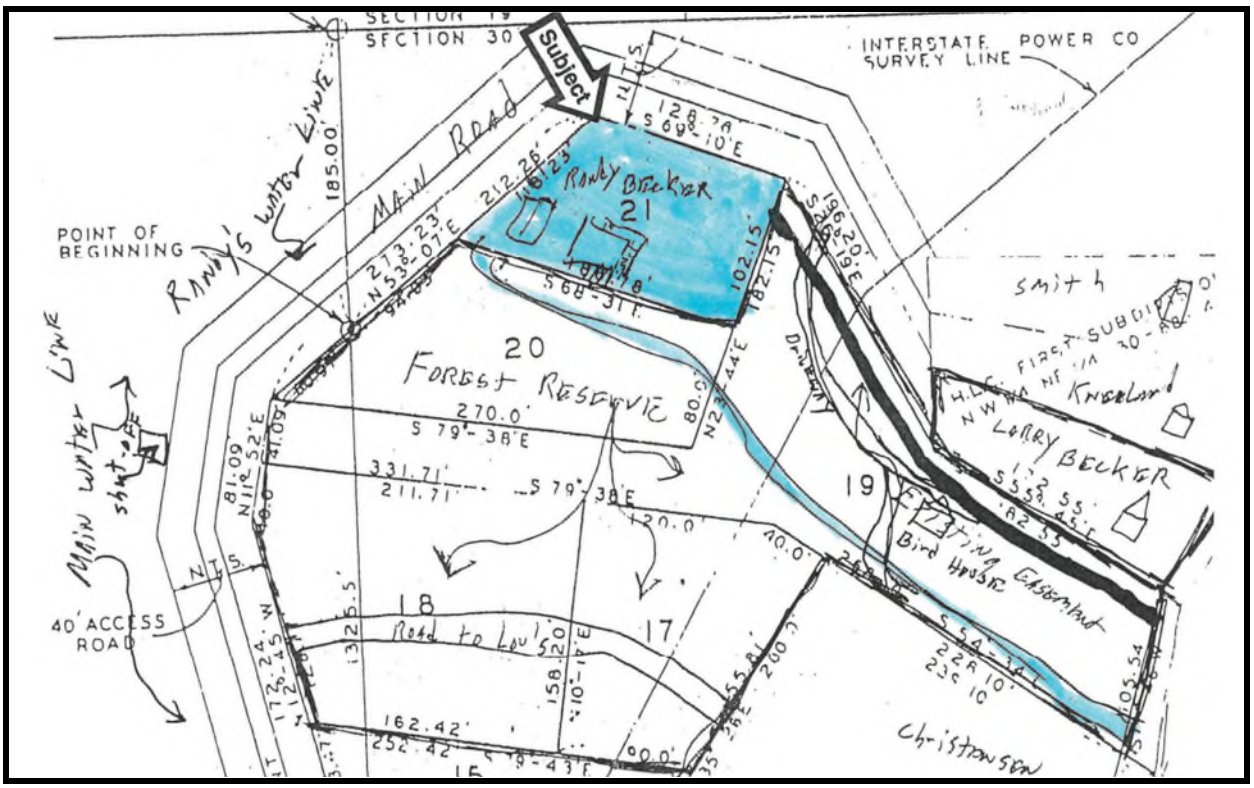
FACTUAL AND PROCEDURAL BACKGROUND

When the Lawsons purchased their home twenty-one years ago in the fall of 2002, they secured a written and recorded easement from the sellers providing them access to the Maquoketa River on foot or by vehicle via a pre-existing path to a dock located on the water's edge. ([D0355], Decree 09/26/2023 at p. 1)). The sellers specifically identified this pre-existing path as the location of the easement to be provided as part of the sale of the home. *Id.*; (*see also*, Trial Testimony of Linda Lawson, Transcript at pp. 34 – 37; Trial Testimony of Donald Lawson, Transcript at pp. 105 – 111).

With the assurance that the Lawsons would have perpetual access to the water via this pre-existing path to be memorialized in the form of a written easement, they made an offer to purchase the property. *Id.* Their offer was accepted. *Id.*

The Lawsons' bank subsequently lent funds to the Lawsons for their purchase of the property. *Id.* As part of the lending process, the bank required an

appraisal to be performed. *Id.* The appraiser (witness Steven L. Duncan) personally inspected the subject property and identified the pre-existing path as the location of the easement. *Id.* at ¶ 4. In doing so, Mr. Duncan's written appraisal report contained a plat map personally highlighted by him identifying the pre-existing path as the location of the easement that would pass with the residence:



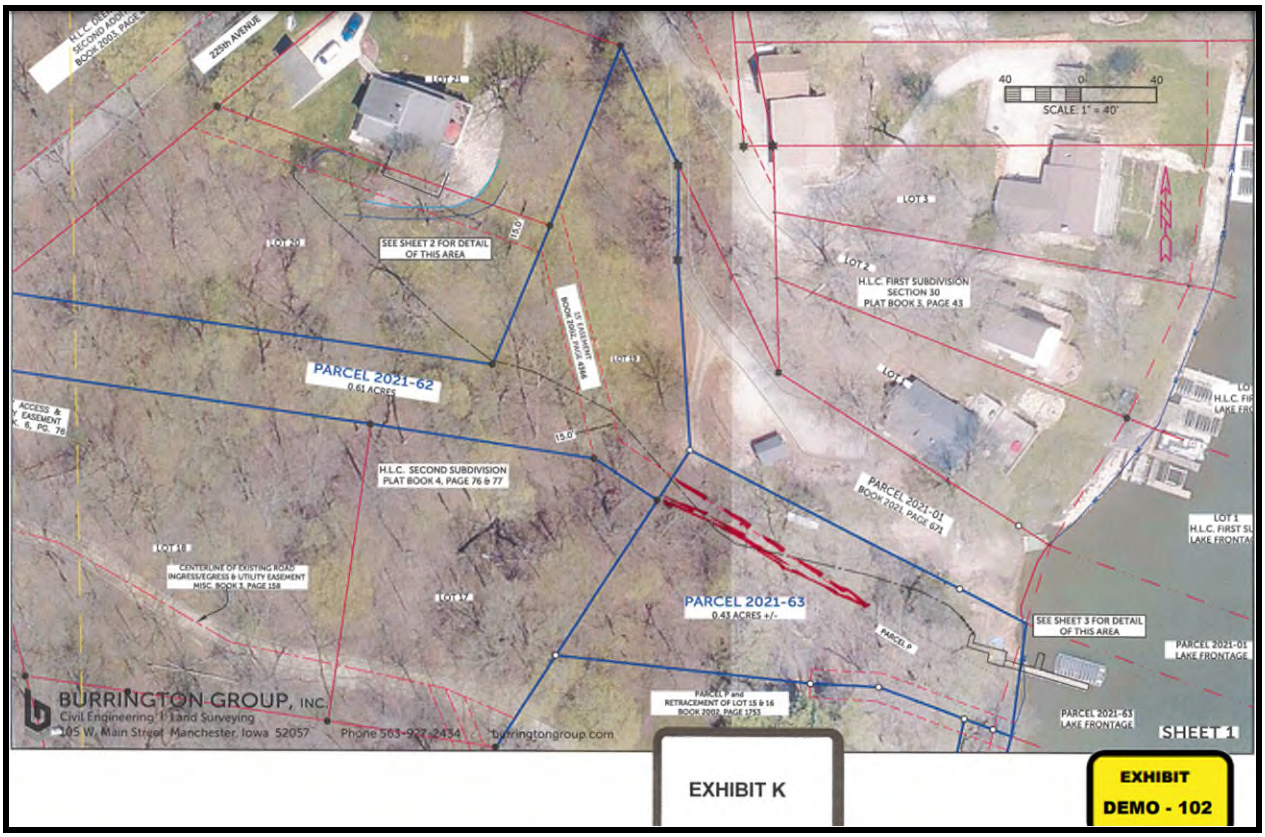
Id. at ¶ 4; (*see also,* [D0326], Appraisal Report at p. 15, Defendants' Exhibit GGG; Trial Testimony of Steven Duncan, Transcript pp. 77 – 103; Physical Item/Court's Exhibit GGG-1). A written easement agreement between the Lawsons and the sellers was ultimately drafted and recorded. *Id.*; (*see also,* [D0286], Easement).

For the next two decades, the Lawsons enjoyed the use of the pre-existing path to reach their dock and boat hoist located at the water's edge consistent with

the plain language of the recorded easement providing them "access to the Maquoketa River on foot or by vehicle." ([D0355], Decree 09/26/2023 at p. 3, ¶ 5). Over the course of those twenty years, the Lawsons regularly mowed the path. *Id.* In addition, the Lawsons hauled in approximately 136.58 tons of dirt and other fill material to improve the path. *Id.* The Lawsons also registered the aforementioned dock with the Iowa DNR in their name and paid the required dock permit renewal fees over these years. *Id.* These activities conducted by the Lawsons over this 20-year span were conducted with the sellers (the Beckers) having their neighboring cabin on the water's edge a short distance from the Lawsons' boat hoist and dock registered in the Lawsons' name. (Appraisal Report, Exhibit GGG).

Then the Finks enter the picture. ([D0355], Decree 09/26/2023 at ¶ 7). In 2020, Mr. Fink sought to purchase the servient parcels between the Lawsons' home and the lake. *Id.* Before purchasing the servient parcels, Mr. Fink's surveyor, Randall Rattenborg, identified the Lawsons' recorded easement as crossing the property the Finks wanted to purchase. *Id.* Mr. Fink was personally aware of the actual path the Lawsons had been using to access the Maquoketa River. *Id.* Mr. Rattenborg informed Mr. Fink that he believed the legal description contained in the Lawsons' recorded easement technically described the easement ending before it reached the Maquoketa River notwithstanding the plain language

of the easement itself indicating that the expressed purpose of the easement agreement was to provide the Lawsons with "access to the Maquoketa River on foot or by vehicle." *Id.*



([D0332], Exhibit DEMO-102; *see also,* Exhibit XY-1, Flash Drive Containing Video Deposition Designations/Videotaped Trial Testimony of Witness Randall Rattenborg). Seizing upon this information, and armed with the knowledge of this discrepancy in the recorded easement's legal description, Mr. Fink ultimately purchased the servient parcels from Larry and Mary Beckers' surviving heirs in April of 2021 through their limited liability company known as XL Investments, LLC. ([D0355], Decree 09/26/2023 at ¶ 7).

Additional problems with the easement's legal description were ultimately found to exist. *Id.* at ¶ 8, p. 5. For example, the easement's legal description incorrectly showed the easement running beneath the deck attached to the Lawsons' home and down an impassable embankment filled with trees and brush. *Id.* The Lawsons, their expert land surveyor, (and indeed, the Finks' own land surveyor) testified the easement's location identified in the incorrect legal description would make access to the Maquoketa River by vehicle impossible. *Id.* (*see also,* Exhibit XY-1, Flash Drive Containing Video Deposition Designations/Videotaped Trial Testimony of Witness Randall Rattenborg; Trial Testimony of Land Surveyor Expert Adam Recker, Transcript pp. 443 – 457; Trial Testimony of Witness Linda Lawson, Transcript at pp. 73 - 76). These defects in the easement's legal description contradicted the plain language of the easement agreement itself which specifically stated the purpose of the easement was to provide the Lawsons access to the river on foot or by vehicle. ([D0286], Easement, *see also,* Exhibit XY-1, Flash Drive Containing Video Deposition Designations/Videotaped Trial Testimony of Witness Randall Rattenborg; Trial Testimony of Land Surveyor Expert Adam Recker, Transcript at pp. 443 – 457; Trial Testimony of Witness Linda Lawson, Transcript at pp. 73 – 76; Trial Testimony of Witness Steve Carr, Transcript at pp. 274 – 293; Trial Testimony of Witness E. Michael Carr, Transcript at pp. 301 - 302).

An additional problem with the easement agreement came to light after this litigation ensued. ([D0355], Decree 09/26/2023 at ¶ 8). Specifically, the easement was purportedly given to the Lawsons by Mary Becker on behalf of the Mary Becker Trust. *Id.* However, it was ultimately discovered that the Mary L. Becker Trust did not own the land burdened by the written easement. *Id*. Instead, that land was actually owned by her husband's trust, the Larry D. Becker Trust. *Id.* Notwithstanding that Mary and Larry Becker were authorized to sell and dispose of real estate under their respective trust agreements without the consent of the other (or necessity of notice to or approval of any court or other person), the trial court found this technical scrivener's error fatal to the validity of the Lawsons' express recorded easement and, in doing so, refused to recognize the validity of the easement, or otherwise reform the easement agreement to conform to the Beckers' unambiguous intent embodied in the plain language of the easement agreement itself granting the Lawsons perpetual "access to the Maquoketa River on foot or by vehicle via an easement." (*Id.* at ¶¶ 8, 11, pp. 5 – 6; *see also,* Trial Testimony of Witness Mark Conway, Transcript pp. 307 – 325; Affidavit of Mark Conway, [D0078] Attachment #1; Affidavit of E. Michael Carr [D0078] Attachment #2).

On summary judgment, the trial court not only found the Lawsons' express recorded easement to be incapable of reformation and technically invalid due to this scrivener's error, but it also dismissed the Lawsons' traditional prescriptive

easement claim and their easement by acquiescence claim, among others. ([D0083], Summary Judgment Ruling 05/08/2023). The Lawsons filed a timely motion to amend and enlarge the trial court's summary judgment ruling. ([D0084], Motion to Amend and Enlarge filed 05/23/2023). In response, the trial court largely overruled the Lawsons' motion to amend and enlarge. ([D0087], Ruling on Motion to Amend and Enlarge 06/29/2023).

The Lawsons' remaining claims of modified prescriptive easement and easement by implication proceeded to trial in August of 2023. ([D0355], Decree 09/26/2023 at p. 1). In setting the trial of those claims, the district court opted to conduct a bench trial on the equitable quiet title issues prior to conducting a separate and subsequent jury trial of the Finks' claims for money damages sounding in tort[1]. ([D0057], Ruling on Finks' Motion to Bifurcate 11/07/2022).

At the conclusion of the bench trial, the district court made a number of factual findings adverse to the Lawsons in quieting title in favor of the Finks.

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[1] This protocol was established by the trial court over the Lawsons' objection based upon this Court's holding in *Morningstar v. Myers* which requires tort claims for money damages to be tried to a jury prior to any associated quiet title claims being tried to the bench in equity. ([D0048], Lawsons' Partial Resistance to Finks' Motion to Bifurcate); *Morningstar v. Myers*, 255 N.W.2d 159 (Iowa 1977) (bifurcation of equitable quiet title action deemed appropriate, but reversing trial court for its failure to set trial of the jury claims for money damages before the trial of the equitable quiet title action)("Not only will that probably dispose of the whole case, but the opposite result effectively takes away Morningstar's right to trial by jury" on the related jury claim for money damages).

([D0355], Decree 9/26/2023 at pp. 1 – 11). The Lawsons filed a timely motion for new trial and motion to amend and enlarge the trial court's findings of fact. ([D0358], Motion for New Trial 10/11/2023; [D0359], Motion to Amend and Enlarge 10/11/2023). The trial court's ruling on the Lawsons' motion to enlarge was issued on October 17, 2023. ([D0363], Ruling on Lawsons' Motion to Enlarge 10/17/2023). The trial court's denial of the Lawsons' motion for new trial was likewise issued that same day on October 17, 2023. ([D0362], Ruling on Lawsons' Motion for New Trial 10/17/2023). The Lawsons filed a timely Notice of Appeal from the trial court's final order denying their motion for new trial. ([D0370], Notice of Appeal 11/10/2023).

Meanwhile, the Finks have hastily commenced construction of a residential structure currently being built over the top of the disputed easement which is the subject of the Lawsons' appeal. ([D0371], Motion for Stay, 11/10/2023). In response, the Lawsons promptly sought a stay from the trial court after posting a supersedeas bond in the amount of $100,000. *Id.* The trial court denied the Lawsons' post-trial motion for a stay on November 29, 2023. ([D0412], Ruling on Lawsons' Motion for Stay dated 11/29/2023). On December 8, 2023, the Lawsons sought an injunction from this Court on an expedited basis. (Appellants' Application for Temporary Injunction and/or Stay and Request for Expedited Relief, 12/8/2023). Two months later, Senior Judge Zager entered an order on

behalf of this Court denying the Lawsons' request for an injunction, but granting interlocutory appeal. (Order Denying Request for Injunction, 2/12/2024).

ARGUMENT

I. The Trial Court Erred in Refusing to Recognize and Reform the Lawsons' Express Recorded Easement When Granting the Finks' Motion for Partial Summary Judgment.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion for summary judgment. ([D0041], Lawsons' Resistance to Motion for Partial Summary Judgment 09/30/2022; [D0042], Lawsons' Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 09/30/2022; [D0043], Brief in Support of Lawsons' Resistance to Motion for Summary Judgment 09/30/2022; [D0058], Lawsons' Amended and Substituted Brief in Support of Resistance to Motion for Summary Judgment 11/11/2022; [D0059] Lawsons' Supplemental Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 11/11/2022). The Lawsons further preserved error by filing a timely resistance to the Finks' supplemental motion for summary judgment. ([D0078], Lawsons' Brief in Resistance to Finks' Supplemental Motion for Partial Summary Judgment 02/28/2023). Following the trial court's issuance of its summary judgment ruling, the Lawsons further

preserved error by filing a timely motion to amend and enlarge the trial court's ruling. ([D0084], Motion to Amend and Enlarge Ruling on Finks' Motion for Partial Summary Judgment 05/23/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. IOWA R. APP. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

In its summary judgment ruling, the district court concluded "the Finks are entitled to judgment as a matter of law on their quiet title claim, as to the Lawsons' defense of express easement." ([D083], Ruling on Finks' Motion for Partial Summary Judgment 05/08/2023 at ¶ 7, p. 6). In reaching this conclusion, the district court found "the Mary L. Becker Trust did not own the land over which the Trust purported to grant the Lawsons an easement to the Maquoketa River…" *Id.* Of course, the servient tenement was actually owned by a trust formed by Mary L. Becker's spouse, Larry D. Becker. *Id.* at ¶ 6, p. 4. The district court further observed: "[I]t almost goes without saying that in order to create an easement, the person or entity granting the easement must own the servient tenement. *Id.*

Mary L. Becker was a co-trustee of her husband's trust. *Id.* As a co-trustee, Mary L. Becker had the power to act independently of her husband in conveying or transferring real property belonging to her husband's trust without necessity of notice to or approval of any court or person. *Id.* "[P]ursuant to the terms of the Larry D. Becker Revocable Trust Agreement, Mary L. Becker, as Co-Trustee, had the power to independently grant an easement across real property owned by the Larry D. Becker Trust." (*See* [D0078, Attachment #1], Affidavit of Mark Conway at ¶ 7).

Notwithstanding these facts, the district court concluded the Lawsons had no valid claim to an express easement to the Maquoketa River by virtue of this scrivener's error contained in the Lawsons' easement. ([D083], Ruling on Finks' Motion for Partial Summary Judgment 05/08/2023 at ¶ 7, p. 6).

This Court has repeatedly held when "interpreting a deed, the **intent of the grantor is the polestar**." *Skoog v. Fredell,* 332 N.W.2d 333, 334 (Iowa 1983) (emphasis added) (citing *Schenck v. Schenck,* 242 Iowa 1289, 1291, 50 N.W.2d 33, 34–35 (Iowa 1951); 23 Am. Jur. 2d *Deeds* § 159, at 205–08 (1965) ; 26 C.J.S. *Deeds* § 82, at 807–09 (1956)); *accord Hawk v. Rice,* 325 N.W.2d 97, 99 (Iowa 1982) ("**The grantor's intent is controlling**, and it is **ascertained by applying general contract principles.**") (citing *Flynn v. Michigan–Wisconsin Pipeline Co.,* 161 N.W.2d 56, 64–65 (Iowa 1968) (emphasis added)); *In re Fleck's*

Estate, 261 Iowa 434, 154 N.W.2d 865, 867 (Iowa 1967) ("'The primary rule of construction is that the **real intention of the parties**, particularly that of the grantor, **is to be sought and carried out whenever possible** ....' " (Citation omitted) (emphasis added)).

Here, there can be no question that as co-trustee of the Larry D. Becker Trust, Mary L. Becker **intended** to grant an easement to the Lawsons from her husband's trust (which actually owned the servient parcels) instead of from her own trust (which did not own the servient parcels). The Lawsons undeniably demonstrated a clear fact question – a question of the grantor's **intent –** which, at minimum, should have been resolved through a trial on the merits, as opposed to a ruling on summary judgment. Therefore, the Finks' Motion for Partial Summary Judgment should have been denied by the district court. *Savings Bank Primghar v. Kelley*, No. 21-1214, 2022 WL 3440702 (Iowa Ct. App. Aug. 17, 2022) ("The determination of **intent** generally **generates a fact question that cannot be decided on summary judgment**") (quoting *Walsh v. Nelson*, 622 N.W.2d 499, 505 (Iowa 2001) (noting "the determination of the parties' **intent** is a **question of fact**" reserved for trial) (emphasis added); *Nationwide Agribusiness Ins. Co. v. PGI International*, 882 N.W.2d 512, 523 (Iowa Ct. App. 2016) ("Because, based upon the specific facts identified by [the non-moving party], there is a **genuine issue of**

fact regarding the agreement and intent of the contracting parties, the **court erred in granting summary judgment**…") (emphasis added).

In the alternative, the district court erred in refusing to reform the easement agreement to reflect the true intentions of the parties in the **expression** of the agreement. *See Nichols v. City of Evansdale*, 687 N.W.2d 562 (Iowa 2004) ("When the mistake is in the **expression** of the contract, the proper remedy is reformation.") (emphasis added). In this instance, it is of no consequence whether Mary Becker signed the easement agreement in her individual capacity, in her capacity as a trustee or the Mary Becker Trust, or in her capacity as co-trustee of the Larry Becker Trust. The point is, she was legally authorized to convey the easement to the Lawsons notwithstanding her mistake in the **expression** of the contract. *Id.* Because the record evidence demonstrates Mary Becker was a legally authorized agent and appropriate signatory to the easement agreement in either instance, this Honorable Court has repeatedly confirmed reformation is the appropriate remedy in such situations involving a mere mistake in the **expression** of the contract. *Id.; see also*, *Midstates Bank, N.A. v. LBR Enterprises, LLC*, 964 N.W.2d 555 (Iowa Ct. App. 2021) (reforming deed to reflect true intent of the parties to real estate transaction where scrivener's error failed to reflect the parties' true intentions).

This Honorable Court has consistently demonstrated a willingness to act through reformation in situations such as these when presented with an effectual appeal to the conscience of the court prompting it to interfere by reformation to mitigate the rigorous rules of law when essential to the ends of justice. *Merle O. Milligan Co. v. Lott*, 263 N.W. 262, 264 (Iowa 1935). This is particularly true in cases where the subsequent purchasers (such as the Finks) are not "innocent purchasers." 76 C.J.S. *Reformation of Instruments* § 58 ("[A] party is not an innocent purchaser if he…was conscious of having the means [to discover a mutual mistake] and did not use them as an ordinarily prudent and diligent person would have done, or if there were circumstances sufficient to put him on inquiry [notice of the deeding parties' mistake]."); *see also*, *Luker v. Moffett,* 38 S.W. 2d 1037, 1041-42 (1931) (reforming a deed where a purchaser was on inquiry notice of the boundary line) (cited with approval in *Orr v. Mortvedt*, 735 N.W.2d 610 (Iowa 2007)).

Here, the district court specifically found Mr. Fink had "actual notice" of defects in the Lawsons' easement agreement long before he purchased the servient parcels. ([D0355], Decree 09/26/2023 at ¶ 7). In fact, Mr. Fink opted to purchase the servient parcels notwithstanding his actual knowledge of the Lawsons' use of the well-worn and pre-existing easement path to their dock situated on the Maquoketa River. *Id.* (*see also,* Trial Testimony of Mark Fink at Transcript Vol.

1, pp. 43 – 87). He even attempted to cajole the Lawsons into moving their dock from its current location prior to his purchase of the servient parcels. (Trial Testimony of Mark Fink at Transcript Vol. 1, pp. 43 – 87). Indeed, Mr. Fink even sold Mr. Lawson a load of rock to improve the shoreline adjacent to the Lawsons' dock prior to his purchase of the servient parcels. (*Id.* at ¶5, p. 3, *see also,* Trial Testimony of Mark Fink at Transcript Vol. 1, pp. 43 – 87). Mr. Fink cannot be described as an "innocent purchaser" under any circumstance. Instead, he would be more accurately described as an opportunist seeking to profit from an unfortunate series of scrivener's errors contained in the Lawsons' easement agreement which were totally unbeknownst to them.

Because reformation should have been ordered by the district court (or, in the alternative, reserved as a fact question for trial), this Honorable Court should reverse the district court's summary judgment ruling and remand the case for further proceedings accordingly.

II. The Trial Court Erred by Declining to Apply the "Control Test" When Evaluating the Lawsons' Easement by Implication Claim.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion for summary judgment. ([D0041], Lawsons' Resistance to Motion for Partial Summary Judgment 09/30/2022; [D0042], Lawsons' Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment

09/30/2022; [D0043], Brief in Support of Lawsons' Resistance to Motion for Summary Judgment 09/30/2022; [D0058], Lawsons' Amended and Substituted Brief in Support of Resistance to Motion for Summary Judgment 11/11/2022; [D0059] Lawsons' Supplemental Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 11/11/2022). The Lawsons further preserved error by filing a timely resistance to the Finks' supplemental motion for summary judgment. ([D0078], Lawsons' Brief in Resistance to Finks' Supplemental Motion for Partial Summary Judgment 02/28/2023). The Lawsons further preserved error by filing a Bench Memorandum on this issue with the trial court prior to the commencement of trial. ([D0239], Lawsons' Bench Memorandum #1 08/17/2023). Following the trial court's issuance of its Decree, the Lawsons further preserved error by filing a timely motion to amend and enlarge the trial court's Decree, which was denied. ([D0363], Motion to Amend and Enlarge Judgment Decree 10/17/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. IOWA R. APP. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

In Iowa, the intent of the parties when granting an easement is analyzed at the time in which the severance of the unity of ownership occurred. *Brede v. Koop*, 706 N.W.2d 824, 830 (Iowa 2005). As such, an easement by implication occurs when the following conditions are met:

> (1) a separation of the title; (2) a showing that, before the separation took place, the use giving rise to the easement was so long continued and obvious that it was manifest it was intended to be permanent; and (3) it must appear that the easement is continuous rather than temporary; and (4) that it is essential to the beneficial enjoyment of the land granted or retained.

Id.

An implied grant of an easement, rather than an implied reservation of an easement, is a distinction that must be observed when determining if an easement by implication exists. *Farmers & Mechanics Sav. Bank of Minneapolis v. Campbell*, 141 N.W.2d 917, 923 (Iowa 1966). "A grant of an easement will be more readily implied than a reservation thereof." *Id*.

When determining the existence of an easement by implication, this Court has declared that the following considerations are important to weigh:

> (a) whether the claimant is the conveyor or the conveyee, (b) the terms of the conveyance; (c) the consideration given for it; (d) whether the claim is made against a simultaneous conveyee; (e) the extent of necessity of the easement to the claimant; (f) whether reciprocal benefits result to the conveyor and the conveyee; (g) the manner in which the land was used prior to its conveyance; and

> (h) the extent to which the manner of prior use was or might have been known to the parties.

Tamm, Inc. v. Pildis, 249 N.W.2d 823, 838 (Iowa 1976). This is a fact-specific inquiry that requires a court to analyze what the **intent** of the parties originally was. 81 Am. Jur. Proof of Facts 3d 199 § 14.

In order for the first element, separation of the title, to be satisfied, there must have been unity of ownership and title at some point. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 569 (Iowa 2004). This requires that "[f]or the necessary unity of ownership for an implied easement to exist, the adjoining lots must be owned as a unit, not under separate deeds treated as separate properties." *Id.* (quoting 25 Am. Jur. 2d Easements § 25). The use of the land must antedate the separation of title. *Wymer v. Dagnillo*, 162 N.W.2d 514, 517 (Iowa 1968). This is when:

> the owner of an entire tract uses it so a party derives from the other a benefit or advantage of a continuous, permanent and apparent nature, and sells the part in favor of which such benefit or advantage exists, an easement, being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication.

Quoting id.; *Loughman v. Couchman*, 47 N.W.2d 152, 154 (Iowa 1951); *Mahlstadt v. City of Indianola*, 100 N.W.2d 189, 192–93 (Iowa 1959); *Tamm, Inc. v. Pildis*, 249 N.W.2d 823, 838 (Iowa 1976).

Naturally, disputes have arisen over the "unity of ownership" and "separation of title" elements when determining the existence of an easement by

implication. *See, e.g., Cosmopolitan Nat'l Bank v. Chicago Title & Tr. Co.,* 131 N.E.2d 4 (Ill. 1955); *United States v. O'Connell*, 496 F.2d 1329 (2d Cir. 1974); *Houston Bellaire, Ltd. v. TCP LB Portfolio I, L.P.*, 981 S.W.2d 916 (Tex. App. 1998); *Dabrowski v. Bartlett*, 246 Ariz. 504, 442 P.3d 811 (Ct. App. Div. 1 2019). A majority of jurisdictions confronting the "unity of ownership" issue when examining easements by implication take a relaxed approach—which would favor the Lawsons—that recognizes the **common authority** of an entity or person **to control** the related parcels, instead of who the actual owners of the parcels may technically be. *Dabrowski*, 246 Ariz. at 515, 442 P.3d at 822. This is known as the "control test."[2] *Id*. The "control test" supports the idea that where an individual or entity has common ownership of parcels, "but was not technically the owner at all, a dominant interest or influence" in the trust or corporation owning the parcels can satisfy the requirement of "unity of title" to then find that separation of title occurred. *M. C. Headrick & Son Enterprises, Inc. v. Preston*, No. 124, 1989 WL 37262, at *6 (Tenn. Ct. App. Apr. 20, 1989) ("B individually acquired Lot 1 and built a house; a driveway was built on a 50-foot strip to serve the structure; B was the sole stockholder of a company which acquired the strip; and B 'had the power

[2] Although several other jurisdictions have recognized and adopted the "control test," this Court has yet to encounter an "easement by implication" case involving "unity of ownership" issues justifying the recognition, adoption and/or application of the "control test." This presents an issue of first impression in the state of Iowa.

to, and did, deal freely with both Lot 1 and the strip and treat them as though he personally owned them'").

The *Dabrowski* case is particularly instructive in light of the facts at issue in the present case. *Dabrowski v. Bartlett*, 442 P.3d 811 (Ariz. Ct. App. Div. 1 2019). In *Dabrowski*, unity of ownership was held to exist when a husband and wife owned one parcel of land that abutted a different parcel of land owned by a trust in which the husband was a trustee. *Dabrowski*, 442 P.3d at 822. With the husband as the trustee of the trust that owned the land adjoining the land that he owned with his wife, there was no difference between who technically owned the properties because the husband "had the power to arrange and adapt the properties" as he saw fit. *Id*.

Likewise, in the case pending before this Court, there is no meaningful difference between the Beckers themselves, the Mary L. Becker Trust, and/or the Larry D. Becker Trust—at least for determining an easement by implication. *See Cosmopolitan Nat'l Bank*, 131 N.E.2d 4; *O'Connell*, 496 F.2d 1329; *Houston Bellaire*, 981 S.W.2d; *Dabrowski*, 442 P.3d 811. The Beckers' subsequent grant of an express easement to the Lawsons (albeit with an incorrect legal description) constitutes the requisite separation of title necessary to establish an easement by implication in the correct location as visually observed by the Lawsons and

verbally described by the Beckers to the Lawsons when they were deciding whether to purchase the property. *Dabrowski*, 246 Ariz. 504, 442 P.3d 811.

By way of further example, when looking at an easement by implication in a paved area between two tracts of land, the Illinois Supreme Court held that while ownership was technically different "[t]here was, in effect, common ownership of both properties sufficient to indicate the ability to arrange and adapt the property in a manner sufficient to satisfy rules of property in the establishment of easement by implication." *Cosmopolitan Nat'l Bank,* 131 N.E.2d at 7. In that case, three individuals owning one piece of property executed two deeds to divide the property into two tracts—the apartment tract and store tract. *Id.* at 6. The deeds conveyed the two tracts to two different corporations, but the three individuals were the incorporators, subscribers, stockholders, and directors of both corporations. *Id*. Thus, the Court determined that the three shareholders were the real parties in establishing the unity of ownership even though the two corporations were not technically the same legal entities. *Id.* at 7 (The corporations were "merely instrumentalities of the individuals who remained the real parties in interest with power to arrange and adapt the properties").

Similarly, in *United States v. O'Connell*, the Second Circuit concluded that when legal entities, like corporations, are "owned and controlled by one or two shareholders in such a manner that they can do with all of the pieces of land as they

please and if the pieces of land are not treated as being separately owned," the entities are close enough to be considered the same. *United States v. O'Connell*, 496 F.2d at 1335. This demonstrates a focus on the "concept of authority: the ability to impress or reserve an encumbrance on property without which an easement cannot be created." *Houston Bellaire*, 981 S.W.2d at 921.

In *Houston Bellaire, Ltd.,* the court took the control test a step further. *Houston Bellaire, Ltd. v. TCP LB Portfolio I, L.P.*, 981 S.W.2d 916 (Tex. App. 1998). That case involved two similar joint business ventures with similar partners:

Corporate Plaza Company Makeup:	**Corporate Plaza 2 Company Makeup:**
Moore – 25%	Moore – 25%
Todd – 25%	Todd – 25%
Ben Powell Trust – 25%	Ben Powell Trust – Nothing
Marian Powell Trust – 25%	Marian Powell Trust – 50%

Id. at 921. Notably, the court emphasized that the trustees and the beneficiaries of the Ben Powell Trust and Marian Powell Trust were identical. *Id*. Therefore, Corporate Plaza Company and Corporate Plaza 2 Company were essentially the same entity, even though the ownership interest was different, for purposes of determining unity of ownership and separation of title for an easement by implication. *Id*.

As in the case pending before this Court, there is no meaningful difference between the Beckers themselves and their two trusts—at least for determining

"unity of ownership" for the Court's easement by implication analysis. *See Cosmopolitan Nat'l Bank*, 131 N.E.2d 4; *O'Connell*, 496 F.2d 1329; *Houston Bellaire*, 981 S.W.2d; *Dabrowski*, 246 Ariz. 504, 442 P.3d 811. The Lawsons undeniably took title to the express written easement in good faith notwithstanding that the easement agreement contained a scrivener's error granting it from the Mary L. Becker Trust instead of the Larry D. Becker Trust. The grant of the written easement to the Lawsons in exchange for financial compensation is no different than the plots of land that were properly purchased in the above line of cases. As is set forth above, a majority of courts confronting similar issues have found unity of ownership for separation of title purposes in other valid land transactions. This Court should likewise find "unity of ownership" and "separation of title" pursuant to the "control test" applied by a majority of jurisdictions confronting similar fact patterns. *See Cosmopolitan Nat'l Bank*, 131 N.E.2d 4; *O'Connell*, 496 F.2d 1329; *Houston Bellaire*, 981 S.W.2d; *Dabrowski*, 442 P.3d 811.

Under Iowa law, in cases of ambiguity or doubt, "a grant of an easement will ordinarily be construed in favor of the grantee dominant owner." 81 Am. Jur. *Proof of Facts* 3d 199 § 14. It was certainly reasonable for the Lawsons, as grantees of the original written easement, to believe that the granting of the easement was valid and granted from the appropriate trust. *Watson v. Neff*, No.

08CA12, 2009-Ohio-2062, 2009 WL 1175168, at *3, (Ohio Ct. App. April 29, 2009) ("implied easements are those easements that a reasonable grantor and grantee would have expected in the conveyance, and a court will read the implied easement into a deed where the elements of that implied easement exist").

The Beckers' intent was undeniably to convey an easement to the Lawsons, so the very act of granting an easement, although from the wrong trust, should not cause the Lawsons to lose the benefit of the bargain they struck with them when they purchased their home more than two decades ago. *Schwob v. Green*, 215 N.W.2d 240, 242–43 (Iowa 1974); *M. C. Headrick & Son Enterprises, Inc. v. Preston*, No. 124, 1989 WL 37262, at *4 (Tenn. Ct. App. Apr. 20, 1989) ("a strong public policy favoring the productive use of land is also at work" when courts recognize easements by implication "in order to do justice in a particular case").

Considering the judicial preference for resolving conflicts in granting easements in favor of grantees over grantors because grantors can control the language used, the Lawsons should undeniably prevail here. 81 Am. Jur. Proof of Facts 3d 199 § 14; *Katter v. Payne*, No. 2011-CA-001988-MR, 2013 WL 3895822, at *3 (Ky. Ct. App. July 26, 2013); *Hajj v. Dodge*, 2019 WL 5309461, at *8–9 (Cal. App. 4 Dist.). In cases of ambiguity or doubt, "a grant of an easement will ordinarily be construed in favor of the grantee dominant owner." 81 Am. Jur. *Proof of Facts* 3d 199 § 14. It was certainly reasonable for the Lawsons, as

grantees of the written easement agreement, to believe that the granting of the easement was valid, correctly described, and consistent with the easement path presented to them by the Beckers when the Lawsons purchased the property.

In contrast, the Finks suggest the point in time at which "separation of title" occurred for purposes of the Court's easement by implication analysis was on March 2, 1987 (the date upon which the Beckers conveyed Lot 21 to their son, Randy, to build the house the Lawsons would later purchase). For the reasons discussed below, the actual point in time at which "unity of ownership" ended and "separation of title" occurred was instead November 15, 2002 (the date upon which the Beckers granted an express written easement to the Lawsons over parcels jointly owned and controlled by the Beckers).

The Finks correctly observe that the Beckers conveyed Lot 21 to their son, Randy, on March 2, 1987 so he could build the house the Lawsons would later purchase. ([D0254], Plaintiffs' Exhibit #13). Critically, however, the Finks attempt to minimize the fact that Randy Becker ultimately conveyed Lot 21 back to his parents via the Mary L. Becker Trust on September 30, 2002. ([D0253], Plaintiffs' Exhibit #12). Specifically, Randy Becker conveyed Lot 21 to the Mary Becker Trust approximately 45 days before the Lawsons purchased that lot on November 15, 2002. ([D0252], Plaintiffs' Exhibit #11). As mentioned above, the Mary L. Becker Trust was controlled by Larry D. Becker and Mary L. Becker as

Co-Trustees of the Mary L. Becker Trust. ([D0347], Defendants' Exhibit SSS). Of course, on November 15, 2002, the Lawsons were granted an express written easement over two adjacent parcels (Lots 19 and 20). ([D0286], Defendants' Exhibit A). On that date, those two adjacent servient parcels (Lots 19 and 20) were also controlled by the same two individuals, Larry and Mary Becker[3]. ([D0246], Plaintiffs' Exhibit #5). Thus, on **November 14**, 2002, Lots 19, 20, and 21 were all owned and controlled by the same two people for purposes of the Court's "unity of ownership" analysis; those being Larry D. Becker and Mary L. Becker. (Trial Testimony of Witness Mark Conway, Transcript pp. 307 – 325). Such "unity of ownership" was then severed on **November 15** for "separation of title" purposes when the Lawsons were granted their express written easement over the servient parcels; those being Lots 19 and 20. *Id., see also,* ([D0286], Defendants' Exhibit A).

In its Decree, the trial court declined to apply the "control test" when evaluating the "unity of ownership" and "separation of title" elements of the Lawsons' easement by implication claim. ([D0355], Decree 09/26/2023 at p. 9, ¶ 7). Instead, the trial court determined the Lawsons' easement was somehow

[3] These servient parcels (Lots 19 and 20) were owned by the Larry D. Becker Trust. Like the Mary Becker Trust, the Larry D. Becker trust was also controlled by Larry D. Becker and Mary L. Becker as Co-Trustees. ([D0346], Defendants' Exhibit RRR, Larry D. Becker Revocable Trust Agreement).

extinguished under a "merger theory." *Id.* This "merger theory" was applied by the trial court *sua sponte* with no party ever advocating for its applicability at any point during the entire case proceedings[4]. Of course, the reason no party ever advocated for this "merger theory" is because it simply doesn't apply to the facts of this case.

The trial court's "merger theory" is obviously inapplicable for at least two key reasons: First, in order for it to apply, there must be an easement to "extinguish" through the merger of parcels under unified ownership. Here, although the pre-existing path and its "use" pre-dated the severance of ownership, the "easement" did not exist until it was expressly granted to the Lawsons on November 15, 2002 upon separation of title. ([D0355], Decree 09/26/2023 at p. 9, ¶ 6). ("It is this continuous and essential **use**, prior to conveyance, that the court infers the parties intended to continue and therefore **ripened into an easement upon separation of title**.") (*citing* 17 Ia. Prac., *Real Estate Law and Practice* § 10:6 (2023-2024 ed.)) Hence, there was no easement to extinguish through a hypothetical "merger" prior to that date, whether by implication or express grant.

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[4] *Sua sponte* judgment is only appropriate where the losing party was on notice of the trial court's intent to address the issue. *Zech v. Klemme*, 2011 WL 2556080 at *5 (Iowa Ct. App. 2007) (unpublished decision) ("[E]ven if we wanted to recognize a district court's ability to enter summary judgments *sua sponte* on issues not raised by the parties, we could not do so here because the district court did not notify [the losing party] of its intent to rule on the…issue.).

Id. Such continuous and essential "use" may only ripen into an easement upon separation of title. *Id.*

Second, under the trial court's reasoning, there could be no "merger" of parcels under unified ownership anyway. As this Court will recall from Brief Section I above, the trial court chose to invalidate the Lawsons' express written easement on the grounds that it was technically issued from the Mary L. Becker Trust instead of from the Larry D. Becker Trust. In a cruel twist, the trial court inexplicably concluded Lots 19, 20, and 21 were all "merged" into unified ownership under a single entity when Randall Becker transferred Lot 21 to the Mary L. Becker Trust, notwithstanding the disparate ownership interests in Lots 19, 20, and 21 previously observed by the trial court when invalidating the Lawsons' express written easement.

The ownership interests in these parcels cannot be both hyper-technically "different" due to a scrivener's error, but then also somehow "merged" into unified ownership under the trial court's *sua sponte* "merger" theory. Yet, the trial court somehow ended up "extinguishing" an express (or implied) easement that was yet to be granted to the Lawsons through this mind-blowing feat of mental gymnastics. Such a result is as illogical as it is unfair and inequitable.

As for the remaining elements of the Lawsons' easement by implication claim, substantial record evidence exists concerning those remaining elements:

- That, before the separation took place, the use giving rise to the easement was so long continued and obvious that it was manifest it was intended to be permanent;

- That the use was continuous rather than temporary; and

- That the use is essential to the beneficial enjoyment of the land granted or retained.

Specifically, the Lawsons adduced credible testimony at trial confirming:

- Defendant Linda Lawson's observations concerning the location and appearance of the pre-existing path to the Maquoketa River prior to the Lawsons' purchase of their home on November 15, 2002 [Trial Transcript at pp. 34 – 37];

- Defendant Donald Lawson's observations concerning the location and appearance of the pre-existing path to the Maquoketa River prior to the Lawsons' purchase of their home on November 15, 2002 [Trial Transcript at pp. 105 – 111];

- Appraiser Steven Duncan's observations concerning the location and permanent/continuous use appearance of the pre-existing path to the Maquoketa River when he visited the property prior to the Lawsons' purchase of the home [Trial Transcript at pp. 85 – 88];

([D0295], Plaintiffs' Exhibit III-13)

- Witness Donald Lawson's testimony concerning the easement path being an essential feature of the home purchase transaction necessary to induce them to purchase the property (Trial Transcript at p. 111);

- Witness Chloe Baldwin's testimony concerning the easement path being essential to the beneficial enjoyment of the property (Trial Transcript at pp. 415 – 416);

- Appraiser Steven Duncan's impressions concerning the financial impact upon the value of the Lawsons' home should the easement be somehow invalidated, thereby defeating the Lawsons' beneficial enjoyment of the property, along with any subsequent purchaser's valuation attributable to the loss of beneficial enjoyment of the property (Trial Transcript at pp. 79 – 81, 99 – 101); and

- Land Surveyor Adam Recker's observations concerning the clear and definite boundaries of the easement path identified during his collection

of evidence, measurements, and survey data from the site (Trial Transcript at pp. 442 – 455, *see also*, [D0084], Defendants' Motion to Amend and Enlarge Findings of Fact and Conclusions of Law at pp 8 - 9).

In the final analysis, because the trial court erred by improperly applying a logically flawed *sua sponte* "merger theory" to the facts of this case instead of the straightforward "control test" applied by virtually every other court confronted with similar facts, this Court should reverse the trial court and remand for further proceedings accordingly.

III. The Trial Court Erred in Granting Summary Judgment to the Finks on the "Hostility" Element of the Lawsons' Traditional Prescriptive Easement Claim.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion for summary judgment. ([D0041], Lawsons' Resistance to Motion for Partial Summary Judgment 09/30/2022; [D0042], Lawsons' Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 09/30/2022; [D0043], Brief in Support of Lawsons' Resistance to Motion for Summary Judgment 09/30/2022; [D0058], Lawsons' Amended and Substituted Brief in Support of Resistance to Motion for Summary Judgment 11/11/2022; [D0059] Lawsons' Supplemental Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 11/11/2022). The Lawsons further preserved error by filing a timely resistance to the Finks' supplemental

motion for summary judgment. ([D0078], Lawsons' Brief in Resistance to Finks' Supplemental Motion for Partial Summary Judgment 02/28/2023). Following the trial court's issuance of its summary judgment ruling, the Lawsons further preserved error by filing a timely motion to amend and enlarge the trial court's ruling. ([D0084], Motion to Amend and Enlarge Ruling on Finks' Motion for Partial Summary Judgment 05/23/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. IOWA R. APP. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

As the district court correctly observed, "A [traditional] prescriptive easement is created when a person uses another's land **under claim of right or color of title**, openly, notoriously, continuously, and **hostilely** for 10 years or more." ([D083], Ruling on Finks' Motion for Partial Summary Judgment 05/08/2023 at ¶ 8, p. 6) (emphasis added) (citing *Johnson v. Kaster*, 637 N.W.2d 174, 178 (Iowa 2001)); *see also*, IOWA CODE § 564.1 (2023). In its ruling on the Finks' motion for partial summary judgment, the trial court incorrectly found "the

Lawsons used the worn path to access the Maquoketa River with the **consent** of the Beckers [so] the Lawsons' use of the path was not hostile." ([D083], Ruling on Finks' Motion for Partial Summary Judgment 05/08/2023 at p. 6, ¶ 8) (emphasis added). This finding is in direct conflict with the district court's subsequent post-trial judgment decree correctly observing: "Unbeknownst to the Lawsons, the easement route described in the Easement and Agreement was not the path running from the garage to Lake Delhi." ([D0355], Trial Court's Judgment Decree issued 09/26/2023 at p. 3, ¶ 4). The Lawsons undeniably acted under **color of title** for more than 20 years when utilizing the pre-existing path to the Maquoketa River that was ostensibly passed to them with the purchase of their home in 2002. ([D0042], Lawsons' Statement of Disputed Material Facts at ¶¶ 2, 31 09/30/2022). The Lawsons' utilization of the pre-existing path under a claim of right and color of title should have precluded the district court from granting summary judgment on the Lawsons' traditional prescriptive easement claim.

The district court's grant of summary judgment on the "hostility" element of the Lawsons' prescriptive easement claim ignores this Court's holding in *Grosvenor v. Olson*:

> Defendant argues plaintiff failed to prove a good faith claim of right or color of title. **Color of title is that which in appearance is title but in reality is no title**. A void deed taken in good faith affords sufficient color of title to sustain the plea and claim of adverse possession

> by one who, relying thereon has taken and held the possession for the required length of time.

Grosvenor v. Olson, 199 N.W.2d 50, 52 (Iowa 1972) (emphasis added); *see also, Franklin v. Johnston,* No. 15-2047, 2017 WL 1086205, at *9 (Iowa Ct. App. Mar. 22, 2017) (unpublished decision) ("A claim for a prescriptive easement is similar to adverse possession, except an easement concerns the use of the property and adverse possession concerns the acquisition of title to the property.").

Contrary to the district court's finding on summary judgment, hostility "does not imply ill-will but instead refers to declarations made or acts done that reveal a claim of exclusive right to the land." *Id.* The requirements of hostility and claim of right are closely related. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Hostility refers to declarations or acts that show the declarant or actor claims a right to use the land. *Id*. "Similarly, a claim of right requires evidence showing an easement is claimed as a right." *Id*.

The facts made available to the district court on summary judgment should have precluded dismissal of the Lawsons' traditional prescriptive easement claim on summary judgment. ([D0042], Lawsons' Statement of Disputed Material Facts at ¶¶ 2, 09/30/2022). The district court wrongfully granted summary judgment on the Lawsons' traditional prescriptive easement claim. Thus, this Court should reverse the district court and remand this case for further proceedings accordingly.

IV. The Trial Court Erred by Failing to Follow Binding Precedential Decisions When Evaluating the Lawsons' Modified Prescriptive Easement Claim.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion for summary judgment. ([D0041], Lawsons' Resistance to Motion for Partial Summary Judgment 09/30/2022; [D0042], Lawsons' Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 09/30/2022; [D0043], Brief in Support of Lawsons' Resistance to Motion for Summary Judgment 09/30/2022; [D0058], Lawsons' Amended and Substituted Brief in Support of Resistance to Motion for Summary Judgment 11/11/2022; [D0059] Lawsons' Supplemental Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 11/11/2022). The Lawsons further preserved error by filing a timely resistance to the Finks' supplemental motion for summary judgment. ([D0078], Lawsons' Brief in Resistance to Finks' Supplemental Motion for Partial Summary Judgment 02/28/2023). Following the trial court's issuance of its summary judgment ruling, the Lawsons further preserved error by filing a timely motion to amend and enlarge the trial court's ruling. ([D0084], Motion to Amend and Enlarge Ruling on Finks' Motion for Partial Summary Judgment 05/23/2023). Following the trial court's issuance of its judgment decree, the Lawsons further preserved error by filing a timely motion to

amend and enlarge the trial court's judgment decree, which was denied. ([D0363], Motion to Amend and Enlarge Judgment Decree 10/17/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. Iowa R. App. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

The requisite elements of a modified prescriptive easement are well-known to this Court. As the Court is aware, a modified prescriptive easement serves as a "relaxed standard" to the traditional elements of an easement by prescription and is based in principles of equity and fairness. *Simonsen v. Todd*, 154 N.W.2d 730 (1967); *Brede v. Koop*, 706 N.W.2d 824, 828 (Iowa 2005). As such, a good faith dominant claimant can demonstrate a prescriptive easement when he or she "has expended substantial amounts of labor or money in reliance upon the servient owner's consent or his oral agreement to the use." *Simonsen*, 154 N.W.2d at 733. In contrast to a traditional easement by prescription, the dominant owner claiming a modified prescriptive easement obtains consent from the servient owner or some type of agreement between the parties was made to allow the dominant owner

initial access and to spend time, money, and labor maintaining the property. Creation of Easements - "Modified" Prescription, 17 Ia. Prac., *Real Estate Law and Practice* § 10:5 (2022–2023 ed.). Therefore, the analysis largely turns to the interpretation of what constitutes "substantial amounts of labor or money." *Simonsen*, 154 N.W.2d at 733.

Iowa caselaw provides considerable guidance on what qualifies as "substantial." In *Malone*, the plaintiff openly maintained a nature trail for nearly 30 years. *Louisa Cnty. Conservation Bd. v. Malone*, 778 N.W.2d 204, 208 (Iowa Ct. App. 2009). "[Plaintiff] brought in and spread gravel, cleared brush, mowed, and trimmed trees—in general maintaining the property as a developed nature trail. The board also mowed and trimmed trees. Hoover Nature Trail placed a sign near where the right-of-way met the road. Hoover Nature Trail paid property taxes on the land." *Id*. While no exact amount of money or hours in labor could be calculated, it was cumulatively enough to be considered "substantial" for the Louisa County Conservation Board to prevail. *See id*.

In *Collins Trust*, Allamakee County established a modified prescriptive easement by installing and maintaining a culvert and performing annual maintenance. *Collins Tr. v. Allamakee Cnty. Bd. of Sup'rs of Allamakee Cnty.*, 599 N.W.2d 460, 465 (Iowa 1999) ("The County had periodically maintained the

surface of the Red Oak Road with a road grader, had graveled portions of the road and had installed drainage structures.").

Furthermore, in *Anderson v. Yearous*, using machinery to dig a ditch was considered "a substantial expenditure of money and labor in reliance upon the servient owners' acquiescence." *Anderson v. Yearous*, 249 N.W.2d 855, 863 (Iowa 1977).

In *Stoner v. Alger*, the Iowa Court of Appeals considered the $805.90 spent on new carpet and approximately $1,100 spent on other repairs to be "substantial" in finding a modified prescriptive easement. *Stoner v. Alger*, 670 N.W.2d 430, 2003 WL 22015833 at *2, *6 (Iowa Ct. App. 2003); *see also*, *Messinger v. Washington Township*, 185 Pa. Super. 554, 137 A.2d 890 (Pa. Super. Ct. 1958) ($100 cost of laying pipe and drain "substantial" when compared to the $650 value of the land on which pipe and drain were laid).

Iowa courts are less likely to find that substantial labor or money has been invested if the maintenance is simply part of the **bare minimum** routine maintenance for the easement to remain passable. *Hall v. Reasoner*, 873 N.W.2d 775 (Iowa Ct. App. 2015) ("mowing alone does not show a substantial outlay of labor or other expenditures.") (emphasis added). There must be a showing beyond mere use where at least some improvements are made. *Simonsen*, 154 N.W.2d at 736; *Heald v. Glentzer*, 491 N.W.2d 191, 194 (Iowa Ct. App. 1992); *Bown v. City*

of State Ctr., No. 05-1488, 2006 WL 2871991, at *5 (Iowa Ct. App. Oct. 11, 2006). Even if some improvements are made, the improvements must be accounted for with clarity in the event of a lawsuit. *Albert v. Thomas*, No. LALA039575, 2011 WL 5830215, at *10 (Iowa Dist. Sep. 27, 2011) ("[They] saw their isolated upkeep activities on the lane as incidental to their usage of it. They never kept track of the expenses associated with upkeep, because they were minor and not seen as an investment in property or an assertion of right. Aside from granting their landlord's request to spread the rock, [they] merely did what needed done to get through when they needed to get through.").

Further, the maintenance must be done mainly, if not exclusively, by the party claiming the modified prescriptive easement. *Chalupa v. Kleopfer*, 746 N.W.2d 279 (Iowa Ct. App. 2008). It is not sufficient when the party claiming the modified prescriptive easement only occasionally did maintenance when other entities, such as a city or neighbors, would not. *Id.* ("Although the City of Washington had contributed gravel and graded the alley over the years, it is not owned by the City. At times neighbors have maintained the alley, including pooling money to buy gravel."); *Bales v. Shepard*, 867 N.W.2d 195 (Iowa Ct. App. 2015) (modified prescriptive easement claim unwarranted when "Bales testified to paying for part of a gravel load and for snow plowing, but little else"). Here, the Lawsons have undertaken all of the maintenance and improvements on their own

accord, by the sweat of their own brow, and/or through the investment of their own financial resources in hiring others to assist in effectuating the improvements, oftentimes in conjunction with the Lawsons' own personal effort and labor. (*See* Trial Testimony of Donald Lawson, Trial Transcript at pp. 112 – 127, 131 – 136, 203 – 207; *see also*, Trial Testimony of Jody Antrim, Trial Transcript at pp. 217 – 232; Trial Testimony of Chloe Baldwin, Trial Transcript at pp. 405 – 410).

In addition to weighing labor and money spent, courts also may take the amount of time into consideration. As the Court is aware, the minimum length of time to establish an easement by prescription is ten years. *Loughman v. Couchman*, 47 N.W.2d 152, 154 (Iowa 1951). Logically, the longer a party spends maintaining the easement in question beyond the ten-year minimum threshold (while continuing to expend money and effort maintaining the easement), the stronger the case is for establishing a modified prescriptive easement. *See Murrane v. Clarke County*, 440 N.W.2d 613 (Iowa Ct. App. 1989) (100 years); *Woodroffe v. Woodroffe*, 864 N.W.2d 553 (Iowa Ct. App. 2015) (over 50 years). In particular, the Iowa Court of Appeals undeniably emphasized the element of time when considering the modified prescriptive easement at issue in *Woodroffe v. Woodroffe*. *See* 2015 WL 1546365 (40 years beyond the minimum 10-year threshold). The evidence adduced at trial conclusively demonstrated the Lawsons' financial investment and laboring efforts in maintaining the easement path for

more than 20 years (double the minimum ten-year threshold) equating to efforts deemed "substantial" in accordance with the legal standards enunciated above.

Here, because the Lawsons have expended "substantial amounts of labor or money in reliance upon the servient owner's consent," to use their express perpetual easement as they have done for the past twenty (20) years, the "hostility" requirement is viewed under a relaxed standard. *Simonsen,* 154 N.W.2d at 733. Prescriptive easements based on this relaxed standard "are determined either on the theory of a valid executed oral agreement or on the principle of estoppel." *Id.* Under this exception to the strict rules governing prescriptive easements, an easement by prescription may arise

> in those instances in which the original entry upon the lands of another is under an oral agreement or express consent of the servient owner and the party claiming the easement expends substantial money or labor to promote the claimed use in reliance upon the consent or as consideration for the agreement.

Id. at 495, 154 N.W.2d at 736; *accord Collins Trust,* 599 N.W.2d at 464 n. 1; *Mensch v. Netty,* 408 N.W.2d 383, 387 (Iowa 1987).

Here, the dollar amounts spent by the Lawsons on the maintenance and other improvements at issue here clearly exceeds the amount deemed "substantial" by this Court and the Court of Appeals ([D0355], Decree 09/26/2023 at ¶ 5, p. 3). Additionally, the Lawsons' actions in improving their easement path by hauling in 136.58 tons of dirt and other fill material to improve the easement over this 20-year

time span is sufficient evidence of the Lawsons' entitlement to a modified prescriptive easement. *Id.* (*see also,* Trial Testimony of Jody Antrim, Transcript pp. 217 – 232; Trial Testimony of Donald Lawson, Transcript pp. 112 – 207). Therefore, this Court should reverse the trial court and remand for further proceedings accordingly.

V. The Trial Court Erred in Granting Summary Judgment to the Finks on the "Definite and Certain" Element of the Lawsons' Easement by Acquiescence Claim.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion for summary judgment. ([D0041], Lawsons' Resistance to Motion for Partial Summary Judgment 09/30/2022; [D0042], Lawsons' Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 09/30/2022; [D0043], Brief in Support of Lawsons' Resistance to Motion for Summary Judgment 09/30/2022; [D0058], Lawsons' Amended and Substituted Brief in Support of Resistance to Motion for Summary Judgment 11/11/2022; [D0059] Lawsons' Supplemental Statement of Disputed Material Facts in Support of Resistance to Motion for Summary Judgment 11/11/2022). The Lawsons further preserved error by filing a timely resistance to the Finks' supplemental motion for summary judgment. ([D0078], Lawsons' Brief in Resistance to Finks'

Supplemental Motion for Partial Summary Judgment 02/28/2023). Following the trial court's issuance of its summary judgment ruling, the Lawsons further preserved error by filing a timely motion to amend and enlarge the trial court's ruling. ([D0084], Motion to Amend and Enlarge Ruling on Finks' Motion for Partial Summary Judgment 05/23/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. Iowa R. App. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

Pursuant to IOWA CODE § 650.14, a boundary line contrary to a legal description may be established "[i]f it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in." "Acquiescence exists when both parties acknowledge and treat the line as the boundary. When the acquiescence persists for ten years the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by

his deed." *Ollinger v. Bennet,* 562 N.W.2d 167, 170 (Iowa 1997) (cited with approval in *Albert v. Conger*, 886 N.W.2d 877, 880 (Iowa Ct. App. 2016)).

"[A]cquiescence must, in large part, be determined in light of the factual situation presented." *Davis v. Hansen,* 224 N.W.2d 4, 6 (Iowa 1974) . Though the "party seeking to establish a boundary other than a survey line must prove it by 'clear' evidence," *Egli v. Troy,* 602 N.W.2d 329, 333 (Iowa 1999), some overt act is **not** required in order to establish acquiescence, *see Ollinger,* 562 N.W.2d at 171. Moreover, the "mere denial of knowledge of the existence of a fence or some other marker demarcating a boundary, or of a claim of ownership thereto will not defeat the claim of acquiescence to the boundary 'if the circumstances are such that [the landowner] should be required to take notice thereof.' " *Tewes v. Pine Lane Farms, Inc.,* 522 N.W.2d 801, 807 (Iowa 1994) (alteration in original). This Court has extended the doctrine of boundary by acquiescence to include access easements. *Thompson v. Schappert*, 294 N.W. 580, 582 (Iowa 1940) ("We have extended the doctrine of acquiescence to establish the boundaries of a driveway easement.").

"Acquiescence may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to dispute it for a ten-year period." *Egli,* 602 N.W.2d at 333. "It is sufficient knowledge if both parties are aware of the fence or other line and of the fact that both adjoining landowners

are, for the required period, treating it as a boundary." *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

In the case presently before this Court, the factual circumstances involved here demonstrate the Lawsons have consistently treated the pre-existing access path as the location of the easement referenced in the attached Easement and Agreement ever since they closed on their house more than twenty (20) years ago. ([D0042], Lawsons' Statement of Disputed Material Facts at ¶¶ 13 – 14).

Moreover, there is absolutely no evidence whatsoever in the record presently before the Court to demonstrate the grantor and/or the adjacent/servient landowners (*i.e.*, the Beckers) ever voiced any concern that the pre-existing access path apparently differed from the incorrect legal description that was inadvertently inserted into the Lawsons' express easement by the sellers' counsel. Thus, the sellers' acquiescence in the boundary consistenetly used by the Lawsons over the past twenty (20) years may be "inferred by the silence or inaction of [the seller / grantor / servient landowners (*i.e.*, the Beckers)] who may or may not have known of the boundary line claimed by [the Lawsons] and fail[ed] to dispute it for a ten-year period." *Egli*, 602 N.W.2d at 333. Here, "it is sufficient knowledge if [the adjoining landowners (*i.e.*, the Beckers)] are aware of the…[line being used by the Lawsons] and of the fact that both adjoining landowners are, for the required period, treating it as a boundary." *Sille*, 297 N.W.2d at 381 (Iowa 1980).

The testimony at trial in this case bore a striking resemblance to the testimony summarized by the trial court in *Albert*:

> In addition to the frequent and obvious acts of the Congers in mowing over Albert's land through the years, there were successive, equally apparent demonstrations of their belief that they owned the area incorporated into their lawn. Albert's legal silence in the wake of each of these acts is noteworthy, but her willingness to allow the sum without protest is emblematic of an actual acquiescence to the Congers' boundary practice.
>
> Over many years the Congers sponsored a march of improvements, in all respects acting as though they owned all the land along the road, north of Albert's field drive.
> …
> The Congers' attitude is not, and has never been, one of arrogant land conquest. Consistent with their testimonial demeanors, [the Congers] sincerely believed from 1993 until sometime circa 2012 that their yard usage comported with their fee title. They had lived in the location of this property since the mid–1960s, and it simply appeared that way as they observed things in the neighborhood and as their personal experiences evolved.

Albert, 886 N.W.2d at 883.

As the conduct of the Lawsons and the Beckers demonstrates, the Lawsons are entitled to the benefit of the bargain they struck more than twenty years ago when they bought their new home with an appurtenant easement ostensibly providing them with unrestricted perpetual access to the Maquoketa River on foot or by vehicle via the pre-existing path identified by the Beckers as the location of the easement that would pass with the residence.

Moreover, the evidence in the record demonstrates the borders and edges of the worn path are perfectly certain and are readily identifiable. Specifically, the parties' respective land surveyor experts testified they were able to easily identify the precise GPS coordinates of the subject access path upon a simple visual inspection, as denoted in the parties' land surveyors' exhibits and trial testimony. (*See, e.g.,* [D0026], Finks' Expert's Land Survey Map, Finks' Appendix at p. 43; [D0069], Deposition Tesitmony of Lawsons' Land Surveyor Adam Recker at pp. 19-21; Finks' Second Supplemental Appendix at p. 11). For whatever reason, the trial court apparently weighed the evidence and disposed of the Lawsons' boundary by acquiescence claim on summary judgment. (*See* [D0083], Trial Court's Ruling on Finks' Motion for Partial Summary Judgment at ¶ 11, p. 8; [D0087], Trial Court's Ruling on Lawsons' Motion to Amend and Enlarge at ¶ 3, p. 2).

On summary judgment, the trial court was obligated to view the record evidence in the light most favorable to the party resisting summary judgment. *Schulte v. Mauer*, 219 N.W.2d 496 (Iowa 1974) (If…an examination of the record discloses any allegations of ultimate fact which, if found true, would constitute a good defense of the action, a summary judgment motion must be overruled); *Bitner v. Ottumwa Community Sch. Dist.*, 549 N.W.2d 295, 300 (Iowa 1996) (A court deciding a motion for summary judgment does not weigh the evidence, but

rather inquires whether a reasonable fact finder faced with the evidence presented could return a decision for the nonmoving party); *First Nat'l Bank in Fairfield v. Kenny*, 454 N.W.2d 589 (Iowa 1990) (Even where the facts are not in dispute…summary judgment is inappropriate where rational minds could draw different inferences from them).

As is established above, the trial court improperly dismissed the Lawsons' easement by acquiescence claim on summary judgment. Therefore, this Court should reverse the trial court and remand for further proceedings accordingly.

VI. The Trial Court Erred in Setting the Equitable Quiet Title Aspect of the Case for Trial Before the Finks' Jury Claims for Money Damages.

A. Preservation of Error

The Lawsons preserved error by filing a timely resistance to the Finks' motion to bifurcate. ([D0050], Lawsons' Partial Resistance to Motion to Bifurcate 10/06/2022). The Lawsons further preserved error by filing a Trial Brief in advance of trial re-urging the arguments set forth in their Resistance to the Finks' Motion to Bifurcate. ([D0218], Lawsons' Trial Brief 08/02/2023 at p. 2, fn. 1). Finally, these arguments were once again re-urged in the Lawsons' Motion for New Trial. ([D0359], Lawsons' Motion for New Trial 10/11/2023). The trial court rejected the Lawsons' arguments on this issue in each instance. (*See, e.g.,* [D0057], Ruling on Finks' Motion to Bifurcate 11/07/2022; [D0362], Ruling on Lawsons' Motion for New Trial 10/17/2023).

B. Standard and Scope of Review

Actions to quiet title are equity proceedings. *Brede v. Koop*, 706 N.W.2d 824 (Iowa 2005). Accordingly, this Court's review of the district court's ruling is *de novo*. IOWA R. APP. P. 6.907. In a *de novo* review, the appellate court examines the facts as well as the law and decides the issues anew. *Id.* The district court's factual findings are accorded weight, but are not binding. *Id.* at 177-78.

C. Discussion

In cases involving the bifurcation of equitable quiet title claims from related tort claims for money damages, this Court requires the tort claims to be tried to a jury first, with the related quiet title claims being tried to the court second. *Morningstar v. Myers*, 255 N.W.2d 159 (Iowa 1977) (bifurcation of equitable quiet title action deemed appropriate, but reversing trial court for its failure to set trial of the jury claims for money damages before the trial of the equitable quiet title action) ("Not only will that probably dispose of the whole case, but the opposite result effectively takes away Morningstar's right to trial by jury" on the related jury claims for money damages).

The Finks led the trial court astray in convincing it to conduct a bench trial on their quiet title claim before their jury claim for money damages has been decided. *Id.* Because the trial court's Decree dated September 26, 2023 has preclusive effect upon the subsequent claims for money damages brought against

the Lawsons, such a result impermissibly deprives them of their right to have those claims sounding in tort decided by a jury of their peers pursuant to Article I section 9 of the Iowa Constitution. *Id.; see also, Winger v. CM Holdings, L.L.C.*, 881 N.W.2d 433 (Iowa 2016) (discussing factors governing application of *res judicata* and the offensive use of issue preclusion/collateral estoppel in subsequent civil proceedings).

Article I section 9 of the Iowa Constitution provides:

> **§ 9 – Right of Trial by Jury – Due Process of Law**
>
> The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

IOWA CONST., Art. 1, § 9.

This Court's decision in *Iowa Nat. Mut. Ins. Co. v. Mitchell* is instructive to the analysis. *Iowa Nat. Mut. Ins. Co. v. Mitchell*, 305 N.W.2d 724 (Iowa 1981) (discussing factors to consider in determining whether a litigant should have been afforded a jury trial on a claim for money damages sounding in tort). In *Mitchell,* this Court reviewed and analyzed the factors to be considered in determining whether the due process is offended when a civil litigant is deprived of her the right to a jury trial on claims for money damages. *Id*. Here, those factors weigh heavily in favor of the Lawsons.

As is set forth in the "computation of damages" section of the Finks' Initial Disclosures, Plaintiffs apparently intend to claim significant money damages in connection with their subsequent jury claims sounding in trespass, conversion, and invasion of privacy, etc. ([D0384], Lawsons' Motion for Stay, Attachment – Finks' Third Supplemental Initial Disclosures at p. 4). By trying the equitable quiet title action first, the trial court below made adverse factual findings against the Lawsons on the following topics which will likely have preclusive effect on the subsequent jury proceedings on the Finks' claim for money damages sounding in tort:

- Whether Mary L. Becker intended to grant the Lawsons an easement from her husband's trust, instead of from her own trust (which did not own the parcels at issue);
- Whether Mary L. Becker intended to grant the Lawsons an easement extending to the Maquoketa River instead of stopping short of the river;
- Whether Mr. Fink had the means to discover a mutual mistake in the Lawsons' express easement and failed to act an ordinarily prudent and diligent person would have done, sufficient to put him on inquiry notice of the mistake;
- Whether the pre-existing borders of the path to the Maquoketa River were "certain and identifiable" when the Lawsons purchased their home;
- Whether prior to November 15, 2002, the use giving rise to the pre-existing path to the Maquoketa River was so long continued and obvious that it was intended to be permanent;
- Whether the appearance of the pre-existing path to the Maquoketa River demonstrates continuous use, rather than temporary use; and

- Whether the easement is essential to the Lawsons' beneficial enjoyment of their property.

Pursuant to *Morningstar*, the Lawsons are entitled to have a jury of their peers weigh the evidence associated with each of these aspects of the Finks' claim that the Lawsons somehow "trespassed" on their property, invaded their privacy, or otherwise "converted" their real estate for their own use. *Morningstar*, 255 N.W.2d 159. The fact questions identified above are all within the province and ordinary understanding of a layperson jury. Such factual findings could have easily been made by a jury through the use of special interrogatories and/or a set of well-crafted jury instructions. *See Berghammer v. Smith*, 185 N.W.2d 226 (Iowa 1971) (discussing trial court's proper use of "special interrogatories" to obtain jury's factual finding on specific points of law).

Morningstar dictates that the trial court was obligated to set the jury claims for money damages sounding in tort (i.e., trespass, conversion, invasion of privacy, etc.) for trial first, prior to any subsequent equitable quiet title proceedings (to the extent such subsequent proceedings would have even been required after the jury had made its findings of fact through special interrogatories). *See Morningstar*, 255 N.W.2d 159. The trial court disregarded this Court's directives in *Morningstar* and usurped the role of the jury by making these findings of fact on its own accord instead, with preclusive effect upon the subsequent jury proceedings on the Finks' claims sounding in tort.

In our system of justice, we routinely trust juries to evaluate complex and weighty issues through the use of special interrogatories and/or detailed jury verdict forms. This case would not be particularly unique, complex, or unusual in this regard. However, the trial court inexplicably decided to disregard this Court's directives in *Morningstar*, and took it upon itself to divest the Lawsons of their right to have these issues decided by a jury of their peers. Thus, this Court should reverse the trial court and remand for further proceedings accordingly.

CONCLUSION

For all of these reasons, this Court should reverse the trial court and remand for further proceedings accordingly.

Respectfully submitted,

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REQUEST FOR ORAL SUBMISSION

The Lawsons request to be heard in oral argument in connection with the submission of this appeal.

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of IOWA R. APP. P. 6.903(1)(g)(1) because this brief contains 12,222 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 in 14 point, Times New Roman font.

By: */s/ Matthew J. Haindfield*
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CERTIFICATE OF SERVICE

The undersigned certifies a copy of the foregoing document was filed on the on the 2nd day of April, 2024 via the Iowa Electronic Document Management System (EDMS) with service to be accomplished upon the following persons via EDMS:

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