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IN THE SUPREME COURT OF IOWA

No. 23-1845

MARK FINK and STACEY FINK,

Plaintiffs-Appellees,

vs.

DONALD LAWSON and LINDA LAWSON,

Defendants-Appellants.

On Appeal from the Iowa District Court for Delaware County,
Case No. EQCV008882,
The Honorable Margaret L. Lingreen

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The District Court Correctly Refused to Reform the Easement Agreement.

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IV. The District Court Correctly Held that the Lawsons Did Not Prove A Modified Prescriptive Easement.

V. The District Court Correctly Found That Easement by Acquiescence Does Not Give the Lawsons an Easement.

VI. The District Court Properly Bifurcated Trial.

ROUTING STATEMENT

The Court should transfer this case to the Iowa Court of Appeals because the case can be resolved through the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a). The Lawsons' request for retention on grounds that this case touches on a new "control test" when evaluating easements by implication is unconvincing. Even if that test were adopted, it could not alter the case's outcome as the District Court correctly found. D0355, Findings of Fact, Conclusions of Law, J. Decree ("Trial Ruling") at 11-12 (Sept. 26, 2023); D0363, Ruling re: Defs.' Mot. to Amend and Enlarge Findings of Fact at 3-4 (Oct. 17, 2023).

NATURE OF THE CASE

For approximately twenty years, the Becker family permitted Defendants Donald and Linda Lawson (the "Lawsons") to traverse the slope between their home and the shore of Lake Delhi on a footpath. The Beckers, and later their children, occupied a cabin built on the shoreline, and gave the Lawsons permission to cross the adjacent wooded lots which were undeveloped and unused.

This arrangement changed in 2021, when Plaintiffs Mark and Stacey Fink (the "Finks") acquired the lots. The Finks planned to build a cabin on the property to enjoy with their children, and thus could not accommodate the Lawsons' footpath winding down the middle of it. But the Lawsons refused to move. After the Lawsons claimed that they owned an easement to the footpath, the Finks brought suit to quiet title because the Lawsons were wrong.

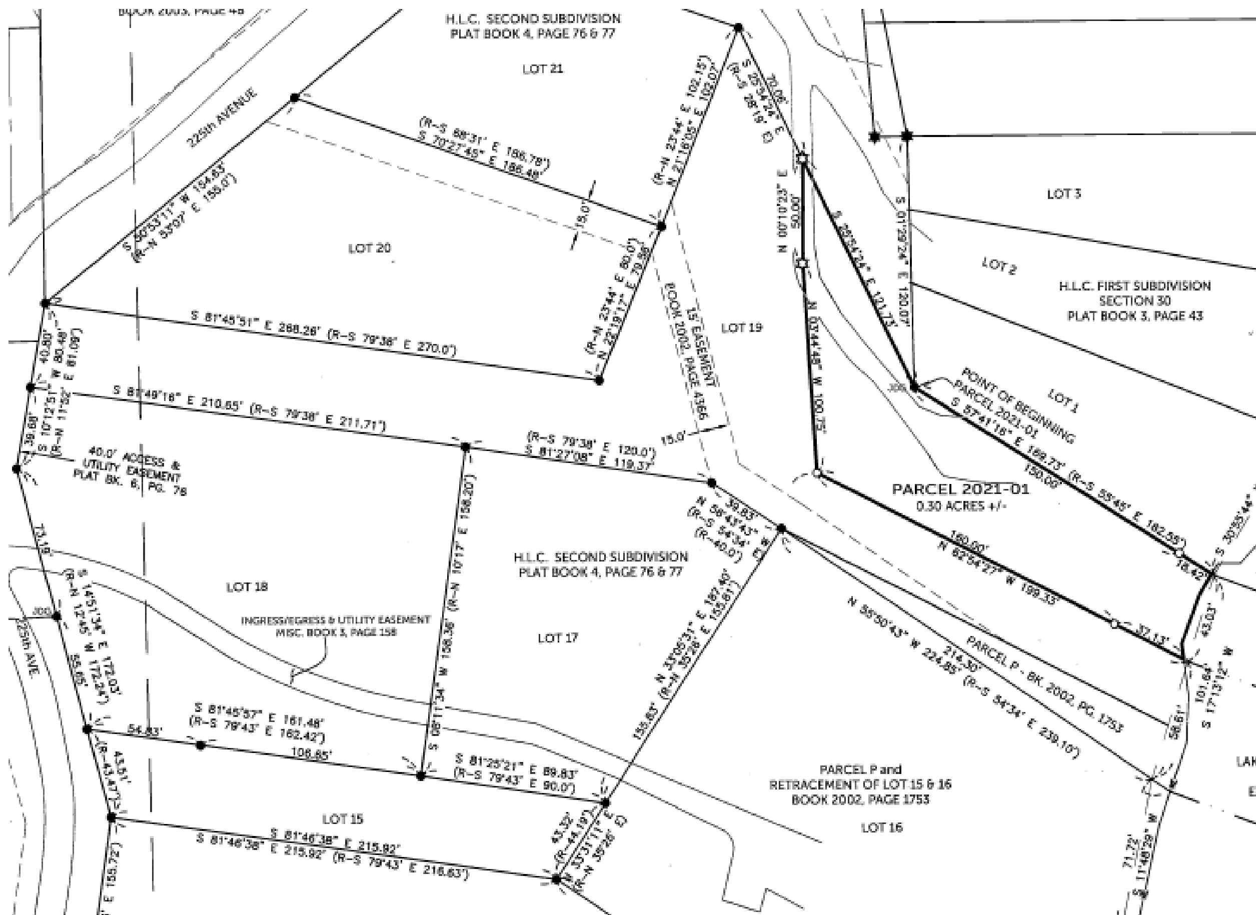
Throughout the case the Lawsons were unsure about how they owned an easement for the footpath. So they advanced a long list of theories to try to get one. They did this regardless of whether they pleaded the theory or not, and regardless of whether Iowa law recognized the theory or not. Most theories fell by way of summary judgment (and then re-fell when the Lawsons asked the District Court to consider them anew at trial). D0083, Motion Ruling at 9 (May 8, 2023). What remained—easement by implication and modified prescriptive

easement—were dismissed following a bench trial. D0355, Trial Ruling at 11-12 (Sept. 26, 2023). The District Court quieted title in Plaintiffs. *Id.* This interlocutory appeal ensued.[1]

STATEMENT OF THE FACTS

In the winter and spring of 2020-2021, the Finks purchased several parcels of land on Lake Delhi to build a cabin to enjoy with their young children. D0242, Pltfs.' Ex. 1 (Aug. 21, 2023); D0247, Pltfs.' Ex. 6 (Aug. 21, 2023). Before being replatted, these parcels were identified as Lots 15-20 in the H.L.C. Second Subdivision in Delaware County, Iowa. *Id.* The Lawsons own Lot 21, which is directly to the north of Lot 20. D0252, Pltfs.' Ex. 11 (Aug. 21, 2023). As is shown in the following (now outdated) plat map, the Lawsons' land (Lot 21) does not border the water on the bottom right corner:

[1] Though the Finks also brought tort claims for trespass, conversion, and invasion of privacy. The District Court bifurcated trial between the equitable quiet-title issues and other legal claims triable to a jury. D0057, Motion Ruling (Nov. 2, 2022). This appeal only concerns the quiet-title action because the jury trial has not yet occurred.



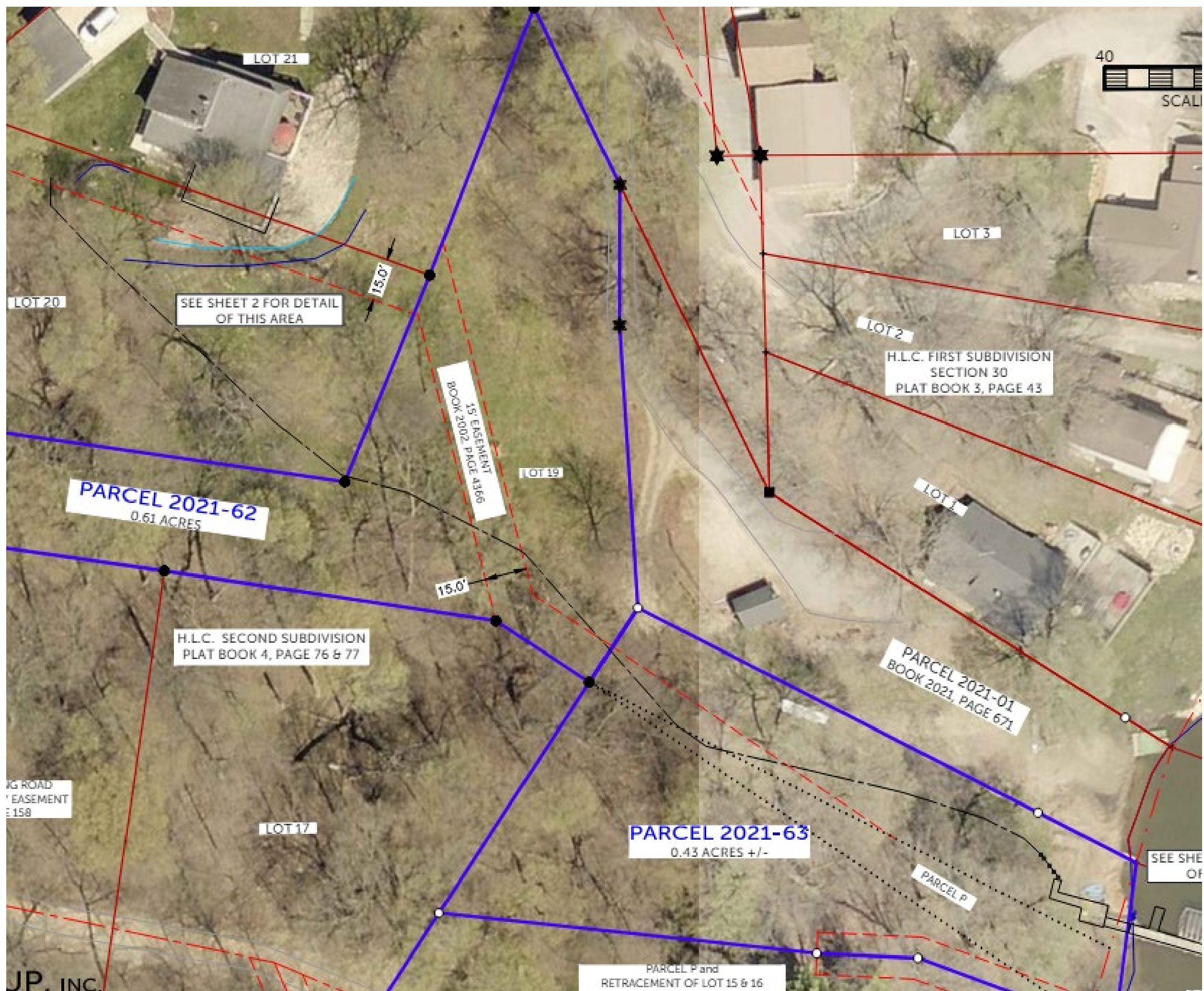
D0259, Pltfs.' Ex. 18 (Aug. 21, 2023).

The Lawsons purchased Lot 21 in 2002 from the Mary Becker Trust. D0252, Pltfs.' Ex. 11 (Aug. 21, 2023). Along with the deed to Lot 21, the Mary Becker Trust also executed an agreement purporting to grant the Lawsons a lakeside-access easement over Lots 19 and 20, running along the dashed lines in the above plat map. D0286, Defs.' Ex. A (Aug. 21, 2023). But the Mary Becker Trust did not own any interests in Lots 19 and 20. The Larry Becker Trust did. D0246, Pltfs.' Ex. 5 (Aug. 21, 2023).

In fact, at the time of the Lawsons' conveyance, the Mary Becker Trust

only owned Lot 21, which it acquired from Larry and Mary Becker's son Randy Becker forty-six days earlier. D0252, Pltfs.' Ex. 11 (November 15, 2002 deed to the Lawsons) (Aug. 21, 2023); D0253, Pltfs.' Ex. 12 (September 30, 2002 deed to the Mary Becker Trust) (Aug. 21, 2023). Randy Becker received Lot 21 from his parents in 1987. D0254, Pltfs.' Ex. 13 (Aug. 21, 2023). 1987 is the last year Lots 19 and 20 (the urged servient estates) and Lot 21 (the urged dominant estate) were under common ownership, all then being titled in the Beckers individually. D0255, Pltfs.' Ex. 14 (Aug. 21, 2023). After Randy acquired Lot 21, he built the house that the Lawsons currently live in. Day 2-5 Trial Tr. 14:10-12. The house had been vacant for some time and was in rough condition when the Lawsons bought it. Day 2-5 Trial Tr. 20:4-8, 27:17-21.

Once the Lawsons purchased Lot 21, they began accessing the shore through Lots 19 and 20, but not on the path described in the easement agreement. *E.g.*, Day 2-5 Trial Tr. 444:1-10, 453:18-21. According to the Lawsons, the path in the easement agreement's legal description is not traversable. Day 2-5 Trial Tr. 447:17-22. Also, the easement agreement's path did not reach the waterside because it was cut off by "Parcel P." D0319, Defs.' Ex. QQQ (Aug. 23, 2023). The red dashed line shows the course of the legally described easement, and the black line shows the footpath the Lawsons used instead:



D0319, Defs.' Ex. QQQ (Aug. 23, 2023).[2]

Even though the footpath diverged from the easement path, the Lawsons testified that they had "permission" from the Beckers to use it. D0343, Linda Lawson Depo. Excerpt at 28:34-29:2 (Aug. 25, 2023) ("Q. And so it would be fair to say that the Beckers gave you and your husband permission to cross their

[2] Ex. QQQ reflects the Finks' replatting of Lots 15, 16, 19 and 20. D0260, Pltfs.' Ex. 19 (Aug. 21, 2023). Under the new plat, the Finks own Parcels 2021-62, 2021-63, and 2021-65 and related lake frontage. For simplicity, however, this brief refers to the prior lot numbers.

property like you've been using it now? A. Yes."); D0351, Don Lawson Depo. Excerpt at 4:1-3 (Aug. 25, 2023) ("Q. Would it be fair to say that you agree with all of the answers that [Linda Lawson] gave to my questions? A. I would say so, yes."). The Lawsons never witnessed the Beckers use this footpath themselves, even when the Mary Becker Trust briefly owned Lot 21, because the Beckers lived in Evansdale and because they had their own lakeside cabin down the hill from the Lawsons' house that had a separate access road. Day 2-5 Trial Tr. 20:17-21:6, 24:7-8; D0344, Pltfs.' Ex. 44 (Aug. 25, 2023); Day 2-5 Trial Tr. 169:8-11.

Since purchasing Lot 21, the Lawsons performed maintenance on the footpath. D0261, Pltfs.' Ex. 20 at 3 (Aug. 21, 2023). Don Lawson testified that he mowed the footpath "maybe every other week" from April to October, Day 2-5 Trial Tr. 125:12-13, 126:4, which would take half an hour to an hour per mow, Day 2-5 Trial Tr. 187:23-188:6. He "occasionally" put down some grass seed. Day 2-5 Trial Tr. 126:20-22, 188:15-189:5. And to counteract erosion and deterioration from use, he laid dirt, gravel, and similar materials on the footpath. D0302, Defs.' Ex. PP (Aug. 21, 2023); Day 2-5 Trial Tr. 417:16-20. Altogether, the Lawsons spent maybe $2,800 over twenty years maintaining the footpath. Day 2-5 Trial Tr. 169:25-186:11; D0302, Defs.' Ex. PP (Aug. 21, 2023); Day 2-5 Trial Tr. 169:25-183:24; *see* D0355, Trial Ruling at 3 (Sept. 26, 2023).

JURISDICTIONAL STATEMENT

This Court has jurisdiction because it accepted the Lawsons' application for interlocutory review. Iowa R. App. P. 6.104.

ARGUMENT

I. The District Court Correctly Refused to Reform the Easement Agreement.

A. Preservation of Error.

The Finks disagree with the Lawsons' error preservation statement. The Lawsons did not plead a theory (or join the necessary defendants) that permitted the District Court to grant contract reformation relief, which is the relief the Lawsons assign error to. Because "any relief granted must be consistent with the case made by the pleading," *Hanson v. Lassek*, 154 N.W.2d 871, 873 (Iowa 1967), and because unpleaded claims and defenses are not preserved for appeal, *e.g.*, *Foods, Inc. v. Leffler*, 240 N.W.2d 914, 920 (Iowa 1976) ("Where an affirmative defense is not properly pleaded, this court will not entertain its assertion on appeal."), the Lawsons failed to preserve error.

B. Scope and Standard of Review.

"An action to quiet title in land is in equity and, thus, th[e] court's review is de novo." *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000).[3]

[3] The Finks note that although the Lawsons cite the correct de novo review in Section I.B of their brief, they also contend that summary judgment standards

That means the Court "review[s] the entire record and decide[s] anew the issues properly preserved for appellate review." *Hora v. Hora*, --- N.W.3d ----, No. 22-0259, 2024 WL 1685065, at *7 (Iowa Apr. 19, 2024) (citation omitted). But de novo review does not mean the Court "decide[s] the case in a vacuum or approach[es] it as though the trial court had never been involved. To the contrary, while not bound by the district court's findings," the Court "give[s] them weight and defer[s] especially where the credibility of witnesses is a factor in the outcome." *Id.* (cleaned up).

Moreover, because the Finks hold "record title" to the land, the Lawsons must establish their claims by clear and convincing evidence. *State ex rel. Iowa Dep't of Nat. Res. v. Burlington Basket Co.*, 651 N.W.2d 29, 34 (Iowa 2002).

C. Reformation Cannot Be Used to Substitute Parties to An Easement Agreement.

The District Court correctly held as a matter of law that reformation cannot be used to swap parties in and out of an easement agreement. The reason why is that in reforming an instrument, "the court does not change the

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should apply. *E.g.*, Appellants' Br. at 22. This is incorrect. At trial, the Lawsons moved the District Court to reconsider their reformation arguments and they succeeded. Day 2-5 Trial Tr. 520:13-525:23. After "considered[ing] all evidence available to the Court," the Court re-affirmed its prior findings and dismissal conclusions. D0355, Trial Ruling at 11 (Sept. 26, 2023). Because the District Court considered the Lawsons' reformation arguments at trial, standards applicable to the review of summary judgment rulings—inferences in favor of the nonmoving party—do not apply.

agreement between the parties, but changes the drafted instrument to conform to the real agreement." *Wellman Sav. Bank v. Adams*, 454 N.W.2d 852, 855 (Iowa 1990). Because reformation does not allow the Court to "change the agreement between the parties," it cannot enable the Court to add an entirely new party to the agreement. *See id.* Doing so would "change" it. *Id.*

Even though this legal principle was the lynchpin of the District Court's holding on reformation, the Lawsons do not cite any case or authority suggesting that the District Court got this principle wrong.[4] *See* Appellants' Br. at 23-25. Instead, the Lawsons point out that Mary Becker could have executed the easement agreement on behalf of the Larry Becker Trust, the separate entity who actually owned the burdened woodland. *Id.* at 23. With that, the Lawsons then jump to the conclusion that the Court was empowered to correct the "expression" of the easement agreement by substituting the Larry Becker Trust

[4] None of the Lawsons' cases involve party-swapping. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 571 (Iowa 2004) (holding that reformation was "not the proper remedy" because the parties' mistake was in the "formation" of the contract since the parties "cannot have reached an agreement with respect to the sewer lines that was mistakenly expressed or omitted from the quitclaim deed"); *Midstates Bank, N.A. v. LBR Enterprises, LLC*, 964 N.W.2d 555 (Table), 2021 WL 1897968, at *7-*8 (Iowa Ct. App. May 12, 2021) (reforming deed to include life-estate provision omitted through a scrivener's error); *Merle O. Milligan Co. v. Lott*, 263 N.W. 262, 264 (Iowa 1935) (reforming contract to include no-commissions clause); *Luker v. Moffett*, 38 S.W.2d 1037, 1041 (Mo. 1931) (reforming deed to adjust location of dividing line between properties).

for the Mary Becker Trust as grantor. *Id.*

Such a move, however, "would be a quantum leap in the law of reformation." *Chanrai Invs., Inc. v. Clement*, 566 So. 2d 838, 840 (Fla. Dist. Ct. App. 1990) (refusing to "backdate a conveyance from a third party that, in hindsight, [shareholders of an affiliated company] wish[ed] they had obtained earlier"). Observing as the Lawsons do that a signatory had authority to act for other entities too is not a license to swap parties bound by the agreement with those unbound by it, as *Chanria* and other courts who have reached the issue conclude.[5] The Lawsons have not even added the party they seek to newly bind

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[5] *Indep. Nat. Bank v. Buncombe Pro. Park, LLC*, 741 S.E.2d 572, 576 (S.C. Ct. App. 2013), *rev'd on other grounds*, 769 S.E.2d 663 (S.C. 2015) ("DeCarlis was not a party to the mortgage and reformation does not permit a court to write a new, additional party into the mortgage to correct the error." (citing 66 Am.Jur.2d Reformation of Instruments § 51 (2011) ("A court of equity may not add or substitute other parties for those appearing on the face of a contract where the effect may be to make a new contract.")); *Morning Star Packing Co., L.P. v. Crown Cork & Seal Co. (USA)*, 303 F. App'x 399, 401 (9th Cir. 2008) ("While a court of equity will reform contracts under many varying circumstances, still it has no power to make a new contract. Its power is simply to reform a contract already made. J.W. Mabb is not a party to the contract, and a court of equity can neither add additional parties nor substitute other parties for those already appearing upon the face of the writing. J.J. Mabb acted as one of the contracting parties, and whether he did it by mistake, through ignorance of law or fact, or did it with knowledge of everything, we deem an immaterial matter." (quoting *Mabb v. Merriam*, 129 Cal. 663, 62 P. 212 (1900)); *Lusher v. Sparks*, 122 S.E.2d 609, 617 (W. Va. 1961) ("The Court can not add parties or substitute other parties for those appearing on the face of the deed, since the effect thereof would be to make a new or different contract.").

to the suit.

Resorting to interpretive principles only adds to these logic gaps in the Lawsons' argument progression. For example, beginning with the "intent of the grantor" as the Lawsons do, Appellants' Br. at 21, applies interpretation in reverse. The true starting point in the Lawsons' string citations is whether a Will or deed is ambiguous, only then do the courts look to parol evidence of intent. *E.g.*, *Skoog v. Fredell*, 332 N.W.2d 333, 335 (Iowa 1983) (finding "heirs of the body" was ambiguous); *Hawk v. Rice*, 325 N.W.2d 97, 98 (Iowa 1982) (interpreting conveyance susceptible to different meanings). Here the Lawsons claim no ambiguity. Rather, in hindsight they don't like the words on the page of the easement agreement or the parties that agreed to them. Interpretation can neither change those words nor the parties who chose them.

Finally, the Lawsons attempt to "appeal to the conscience of the court" by castigating Mark Fink as not an "innocent purchaser." Appellants' Br. at 24-25. In the name of equity, they label Mark Fink an "opportunist," but fail to see that equity is a false friend: "Equity will not assist one whose condition is due to a want of proper and reasonable diligence." *Snyder v. Ives*, 42 Iowa 157, 159 (1875). More specifically, "Equity does not require a court to reform a contract to correct an error when due diligence would have uncovered and corrected the error." 76 C.J.S. *Reformation of Instruments* § 59; *see Snyder*, 42 Iowa at 159

("Where the means of inquiry are equally open to both parties, no relief will be granted from the consequences of a mistake occurring without fraud or falsehood.).

It was nothing but the Lawsons' own lack of diligence *for two decades* that prevented them from uncovering the Mary Becker Trust's non-ownership of Lots 19 and 20. *E.g.*, Day 2-5 Trial Tr. 64:8-65:25; Day 2-5 Trial Tr. 153:2-16. Reformation therefore should not assist them.

II. The District Court Correctly Concluded the Control Test for Easement by Implication Would Not Alter the Ruling.

A. Preservation of Error.

The Finks agree that the Lawsons preserved error on this issue.

B. Scope and Standard of Review.

The scope and standard of review is de novo, the same as Issue I.

C. The Control Test Is Immaterial on the Facts Here.

To show easement by implication, the Lawsons must establish (i) "a separation of the title" for two parcels after a period of unified ownership; (ii) 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"; (iii) that "the easement is continuous rather than temporary"; and (iv) that the easement "is essential to the beneficial enjoyment of the land granted or retained." *Brede v. Koop*, 706 N.W.2d 824, 830 (Iowa 2005) (quotation

omitted). The District Court found multiple elements lacking.

The Lawsons do not directly challenge the District Court's conclusions under the existing elements of Iowa law. Rather, the Lawsons say a new "control test" should be used. The new test relaxes the unity-of-ownership element by looking past the record owner of the property and focusing instead on who has authority to control the property. *E.g.*, *Houston Bellaire, Ltd. v. TCP LB Portfolio I, L.P.*, 981 S.W.2d 916, 920-21 (Tex. App. 1998). Under the control test, unity of ownership is met so long as the same individual controls the property underneath different corporate or legal personalities. *Id.* The control test cannot aid the Lawsons for three reasons.

First, even if adopted, the control test would not displace the doctrine of merger. The doctrine of merger provides that when the same person owns the servient and dominant estate of an easement, the estates "merge" and the easement is destroyed. *Campbell v. Waverly Tire Co.*, 796 N.W.2d 456 (Table), 2003 WL 23008846, at *4 (Iowa Ct. App. Dec. 24, 2003). If satisfying the control test can constitute unity of ownership, then this unity of ownership can work a merger as well. *Dabrowski v. Bartlett*, 442 P.3d 811, 821-22 (Az. Ct. App. 2019) (applying the control test to find merger extinguished an easement). The one requires the other.

Applied here, that means the Lawsons' purported easement was

extinguished when the Mary Becker Trust and the Larry Becker Trust reacquired the dominant and servient estates in 2002. The Lawsons attempt to use this period of ownership to establish unity of title. Appellants' Br. at 35-36. But the real effect of this period is that the easement terminated through merger before the Lawsons acquired Lot 21.

Against this, the Lawsons contend that there could not be a merger because the easement didn't exist until "it was expressly granted to the Lawsons" when they bought their home. Appellants' Br. at 37. If so, then the Lawsons must prove the Beckers reestablished an easement by implication during the forty-six days that their trusts owned the home in 2002. Forty-six days, however, is not enough to prove that the use giving rise to the easement was "so long continued" that it "was manifest it was intended to be permanent." *Wymer v. Dagnillo*, 162 N.W.2d 514, 517 (Iowa 1968). In fact, there is no evidence the Beckers used the home or the footpath *at all* during this time of co-ownership. Day 2-5 Trial Tr. 20:17-21:6, 24:7-8.[6]

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[6] The Lawsons also complain that the District Court engaged in "cruel," "illogical," "unfair," "inequitable," and "mind-blowing" "mental gymnastics" when it assumed for argument's sake that the control test applied to easements by implication but not to reformation. Appellants' Br. at 38. Reasoned expositors of the control test note, however, that the test examines whether there is sufficient unity of ownership for "purposes of implying an easement," not for any purpose whatsoever. *United States v. O'Connell*, 496 F.2d 1329, 1333 (2d Cir. 1974); *see id.* at 1336 ("The separation of corporate and personal entities will be

Second, even if merger's effect is suspended, the Lawsons still could not establish the Beckers created an easement by implication. Easement by implication requires that the dominant and servient estates be used as a "unit." *Nichols*, 687 N.W.2d at 569 ("[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." (citation omitted)). This requirement goes to the heart of what an implied easement is: an easement presumed to exist because the way the owner uses one estate for the benefit of another. *Farmers & Mechanics Sav. Bank of Minneapolis v. Campbell*, 141 N.W.2d 917, 923 (Iowa 1966). But the Beckers did not use the two estates here as a unit. The Lawsons' home sat empty and abandoned during the six weeks the Mary Becker Trust held title. Day 2-5 Trial Tr. 20:4-8, 27:17-21. When the Beckers travelled to the lake, they stayed at their own cabin next door and did not use the Lawsons' lot. Day 2-5 Trial Tr. 20:17-21:6, 24:7-8; *see* D0344, Pltfs.' Ex. 44 (Aug. 25, 2023); Day 2-5 Trial Tr. 169:8-11. Based on these circumstances and the fact the Beckers acquired the home from their son, it appears that the only reason the Mary Becker Trust held the Lawsons' lot was to sell it. Therefore, the Beckers "owned" the lots "separately, as separate property," so the "relevant

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ignored only for the purpose of determining whether there is sufficient unity of ownership to allow implication of an easement.").

unity of title is lacking." *Nichols*, 687 N.W.2d at 569.

Third, disregarding merger and the "unity" requirement, the Lawsons cannot establish easement by implication because the footpath is not "essential to the beneficial enjoyment of the[ir] land[.]" *Brede*, 706 N.W.2d at 830. An easement is essential to enjoyment of the Lawsons' land if "there could be no other reasonable mode of enjoying the dominant tenement without the easement." *Starrett v. Baudler*, 165 N.W. 216, 220 (Iowa 1917). Here the Lawsons' lot can be reasonably enjoyed as a family home without lakeside access via the footpath. Indeed, the Lawsons lived in their home for six years after the dam on Lake Delhi broke, when water in the lake was "gone." Day 2-5 Trial Tr. 68:6-69:8. Thus, even with the control test, the Lawsons did not clearly prove the elements of easement by implication as the District Court properly found.

III. The District Court Correctly Found that the Lawsons Do Not Have a Traditional Prescriptive Easement.

A. Preservation of Error.

The Lawsons did *not* preserve error and are seeking rulings on appeal for issues they did not raise or ask for rulings on below. Following the close of evidence, the Lawsons moved the District Court to reconsider dismissal of their (i) boundary by acquiescence, (ii) reformation, and (iii) prescriptive easement defenses. Day 2-5 Trial Tr. 520:13-525:23. They succeeded. The District Court

granted the Lawsons' motion, but "[u]pon review of the law and facts" "affirm[ed]" its prior dismissal ruling. D0355, Trial Ruling at 10 (Sept. 26, 2023). The Lawsons' success in having their prescriptive easement claim reconsidered under the evidence offered at trial carries a consequence that they cannot now quibble that the summary judgment ruling was wrong (although it wasn't). *See Dupree v. Younger*, 598 U.S. 729, 734 (2023) (explaining that "after trial, a district court's assessment of the facts based on the summary-judgment record becomes ancient history and is not subject to appeal" (cleaned up)).

To preserve error, Iowa law required the Lawsons to pursue a ruling on each element of their prescriptive easement defense. *See* Appellants' Br. at 42 (citing five elements); *Freedom Fin. Bank v. Est. of Boesen*, 805 N.W.2d 802, 809 (Iowa 2011) ("If the court does not rule on an issue and neither party files a motion requesting the district court to do so, there is nothing before us to review."). At no point did the Lawsons do this—whether on summary judgment, trial, or post-trial. As a result, four of five of the Lawsons' prescriptive easement elements have no developed record and ruling to review, and the Lawsons have not preserved error for appeal. They urged and received reconsideration of the hostility element at trial, but abandoned the remaining elements.

Because the Lawsons did not request rulings on their prescriptive

easement elements, they also raise arguments for the first time on appeal. As an example, the Lawsons urge that they "undeniably acted under **color of title** for more than 20 years." Appellants' Br. at 43 (emphasis in original). None of the five briefings the Lawsons cite for error preservation, Appellants' Br. at 41-42 (D0041, 43, 58, 78, 84), contain the term "color of title." The Lawsons' other filings are equally silent. D0218, Defs.' Trial Br. (Aug. 2, 2023); D0358 (Oct. 11, 2023). Asserting new arguments on appeal is manifestly unfair to the Finks and the District Court, and is why this Court does not consider them.

B. Scope and Standard of Review.

The scope and standard of review is de novo, the same as Issues I and II.

C. The Lawsons Cannot Satisfy the Hostility Element Because They Used the Footpath with Permission.

The Lawsons isolate passages of the District Court's summary judgment and trial rulings to urge "direct conflict" and assail an adverse "hostility" conclusion. Appellants' Br. at 42-43. No direct conflict exists, however, and the District Court's hostility conclusion was correct.

On the hostility element, Iowa law required the District Court to distinguish between "express notice" to the Beckers of an adverse ownership claim and the Lawsons' subjective state of mind. Iowa Code § 564.1; *Larman v. State*, 552 N.W.2d 158, 162 (Iowa 1996) (section 564.1 requires "express notice," "[o]therwise, the landowner may incorrectly assume the other's use results

merely from the landowner's willingness to accommodate the other's desire or need to use the land.”). This is what the District Court did. It decided “the Lawsons’ use of the path was not hostile” because “the Lawsons used the worn path to access the Maquoketa River with the consent of the Beckers.” D0083 at 6, (May 8, 2023). The conclusion about the Beckers’ consent is different, and is consistent with the findings that the Lawsons did not subjectively distinguish between the legally described easement and the footpath.

The Districts Court’s conclusions are also supported by evidence not in genuine dispute. The Lawsons admitted at deposition that they had “permission” from the Beckers to use the footpath. D0343, Linda Lawson Depo. Excerpt at 28:34-29:2 (Aug. 25, 2023) (“Q. And so it would be fair to say that the Beckers gave you and your husband permission to cross their property like you’ve been using it now? A. Yes.”).; D0351, Don Lawson Depo. Excerpt at 4:1-3 (Aug. 25, 2023) (“Q. Would it be fair to say that you agree with all of the answers that [Linda Lawson] gave to my questions? A. I would say so, yes.”). When the consequence of those admissions became apparent—no hostility or express notice—the Lawsons pivoted. They testified that they had “special permission” to use a different path, and thought the footpath was part of the written easement agreement. *E.g.*, Day 2-5 Trial Tr. 29:13-16; *but see* Day 2-5 Trial Tr. 168:5-8 (“Q. You say ‘special permission.’ You had special permission.

Tell me, what is the difference between permission and special permission? A. Well, really none, I don't see.”).

Spinning their testimony in this manner does not help. First, “permission” and “ownership” are distinct concepts. If the Lawsons “owned” an easement for the footpath, they would not need the Beckers’ “permission” to use it as they testified. Second, the Lawsons’ position is that any adverse, prescriptive use of the footpath was “unbeknownst” to them *and* the Beckers, which is why the Lawsons urge reformation: “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.” Appellants’ Br. at 23. Simply, a record cannot support “clear and convincing” evidence of hostility when the Lawsons also claim that they proved the Beckers intended to let the Lawsons use the footpath all along. The Lawsons’ conflicting testimony and conflicting understanding of the trial record demonstrate good reasons why the District Court dismissed their prescriptive easement theory.

D. The Lawsons Cannot Establish Color of Title.

In the event the Court considers the Lawsons’ color of title arguments for the first time on appeal, those arguments should be declined because the Lawsons’ subjective belief is insufficient proof of color of title. “To make title ripen by adverse possession under color of title, it must appear that the

instrument itself gave color of title;" it is not enough "that the occupant" merely "believed the instrument gave title[.]" *Van Dusen v. Sharrar*, 173 N.W. 97, 100 (Iowa 1919). The Lawsons' easement agreement may supply color of title to the path the easement describes, which the Lawsons did not use and assert it would be impossible for them to use. But it cannot provide color of title for the footpath, which significantly diverges from the described path. *See Harris v. Brown*, 169 N.W. 664, 666 (Iowa 1918) ("The deed gave defendants no color of title beyond that which the deed itself upon its face suggested.").

Moreover, the Lawsons cannot have a good-faith claim to the easement when they admit they entered the land with the Beckers' "permission." D0343, Linda Lawson Depo. Excerpt at 28:34-29:2 (Aug. 25, 2023) ("Q. And so it would be fair to say that the Beckers gave you and your husband permission to cross their property like you've been using it now? A. Yes."); *Croell Redi-Mix, Inc. v. Baltes*, 767 N.W.2d 421 (Table), 2009 WL 778760, at *4 (Iowa Ct. App. Mar. 26, 2009) (claimant could not establish good faith when he had been using the land with the landowner's "permission"). Because of that, the Lawsons' prescriptive easement defense rightfully failed.

IV. The District Court Correctly Held that the Lawsons Did Not Prove A Modified Prescriptive Easement.

A. Preservation of Error.

The Finks agree that the Lawsons preserved error on this issue.

B. Scope and Standard of Review.

The scope and standard of review is de novo, the same as Issues I, II, and III.

C. The Lawsons Did Not Expend Substantial Money or Labor Improving the Footpath.

A modified prescriptive easement may arise when "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." *Brede,* 706 N.W.2d at 828 (citation omitted).

The Lawsons' claim of modified prescriptive easement fails here because they did not expend substantial money or labor in improving land that now belongs to the Finks. "Substantial," as informed by the case law, demands a truly significant amount of money or effort. "[M]ost frequently," substantiality has been found in "drainage cases"—that is, cases in which the claimant

excavated or installed hundreds or thousands of feet of ditches[7] or tile,[8] sometimes by hand. *Nat'l Properties Corp. v. Polk Cnty.*, 386 N.W.2d 98, 105 (Iowa 1986) (citing *Simonsen v. Todd*, 154 N.W.2d 730, 733 (Iowa 1967)). In one of the Iowa Supreme Court's rare non-drainage cases, the claimant "expend[ed] labor and money in sinking [six mine] shafts, running drifts, purchasing tools, providing machinery," and conducted other activities to extract minerals from the defendant's land. *Beatty v. Gregory*, 17 Iowa 109, 113-14 (1864).

Using these Iowa Supreme Court decisions as a touchstone, the Lawsons'

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[7] *Cook v. Chicago, B. & Q.R. Co.*, 40 Iowa 451, 453 (1875) (applying modified standard where claimant dug a ditch about four hundred feet in length); *Vanneat v. Fleming*, 44 N.W. 906, 907 (Iowa 1890) (applying modified standard to claimant's ditch that ran over three hundred feet and was two or three feet deep); *Hatton v. Cale*, 132 N.W. 1101, 1102 (Iowa 1911) (applying modified standard to over a drainage ditch over a thousand feet long); *Anderson v. Yearous*, 249 N.W.2d 855, 863 (Iowa 1977) (applying modified standard to ditch dug across the entire northern border of claimant's farm); *Nat'l Properties Corp. v. Polk Cnty.*, 386 N.W.2d 98, 105 (Iowa 1986) (applying modified standard where Polk County constructed a "large drainage district").

[8] *Ruthven v. Farmers' Co-op. Creamery Co.*, 118 N.W. 915, 916 (Iowa 1908) (applying modified standard when claimant tore up over a thousand feet of tile and laid well more than that at claimant's own expense); *Pascal v. Hynes*, 152 N.W. 26, 27 (Iowa 1915) (applying modified standard to over three hundred feet of tile); *Morse v. Rhinehart*, 192 N.W. 142, 142 (Iowa 1923) (applying modified standard to over a thousand feet of tile); *McKeon v. Brammer*, 29 N.W.2d 518, 520 (Iowa 1947) (applying modified standard to over a thousand feet of tile); *Loughman v. Couchman*, 47 N.W.2d 152, 153 (Iowa 1951) (applying modified standard to over five hundred feet of tile); *Dorr v. Simmerson*, 103 N.W. 806, 807 (Iowa 1905) (applying modified standard to tiling of land into a ditch and digging the ditch deeper to receive the tiles).

labor and expense, consisting of mowing and occasionally laying black dirt and seed to fix erosion, plainly are not substantial. Even if evidence showed that the Lawsons expended nearly $2,800 on dirt, seed, and equipment to lay these materials, $2,800 spread over twenty years does not amount to the cost of digging pathways for thousands of feet of tile or installing several shafts to mine minerals. Averaged out, the Lawsons' expenses merely equate to around $140 a year. When compared with the above opinions, that cannot be a substantial amount, much less one established by clear and convincing evidence.

The Lawsons' cases are either inapposite or unpersuasive. Several aren't about modified prescriptive easements at all. The Lawsons quote *Louisa County Conservation Board v. Malone* at length to suggest that spreading gravel, clearing brush, mowing, and trimming trees counts as "substantial" cost for modified prescriptive easement purposes. 778 N.W.2d 204, 208 (Iowa Ct. App. 2009); Appellants' Br. at 47. But *Louisa County* rests on traditional prescriptive easement principles and doesn't mention or use the term "modified prescriptive easement" at all. *See generally id*. So nothing in that case casts light on what is or is not substantial labor or expense.

The Lawsons' next case—*Collins Trust v. Allamakee County Board of Supervisors of Allamakee County*—drops a footnote to clarify that permissive use can "ripen" into a prescriptive easement under Iowa's modified prescriptive

easement doctrine, 599 N.W.2d 460, 464 n.1 (Iowa 1999), but does nothing more with the doctrine. In the end, the case holds that Allamakee County acquired its easement by satisfying the traditional elements. *Id.* at 463-66. Here, the Lawsons' characterization that the county "established a modified prescriptive easement by installing and maintaining a culvert and performing annual maintenance" is simply wrong. Appellants' Br. at 47. Apart from the single footnote mentioned earlier, the *Collins Trust* court did not mention modified prescriptive easements. Thus, *Collins Trust* is also not informative about the substantial cost standard.

After these inarguably inapposite cases, the Lawsons' cite two decisions that do actually discuss modified prescriptive easement principles, yet not in the manner the Lawsons contend. First, in *Anderson v. Yearous* there was substantial cost because the claimant used machinery to dig a ditch across the entire northern border of his farm. *Anderson*, 249 N.W.2d at 863. The considerable size of the improvement to the land, not the mere use of a mechanical device, was the driving factor in the court's conclusion.

Second, *Stoner v. Alger* found a traditional prescriptive easement on a set of stairs adjoining two buildings after "at least seventy years" of continuous use, without any significant evidence of permission. *Stoner v. Alger*, 670 N.W.2d 430 (Table), 2003 WL 22015833 at *2, *5-6 (Iowa Ct. App. Aug. 27, 2003) ("The

use was open, notorious, continuous, and hostile . . ."). The unpublished decision then assumed that "even if the use" "was originally permissive" "such use ripened into a [modified] prescriptive easement." *Id.* at *7. The reasoning that precedes this dicta is what the Lawsons cite: that cleaning, sweeping, and maintaining a set of steps can be substantial labor. But *Stoner* gave this advisory opinion in 2003 before the Iowa Supreme Court's *Brede* decision, which expressly held that the labor entailed in keeping a throughway passable constitutes mere use that cannot establish a prescriptive easement. *Brede*, 706 N.W.2d at 829. In light of *Brede*, *Stoner's* dicta cannot be followed. And as an unpublished decision, *Stoner* was not precedential for what constitutes "substantial" cost and labor to begin with. *State v. Shackford*, 952 N.W.2d 141, 145 (Iowa 2020).

Next, the Lawsons acknowledge that "[t]here must be a showing beyond mere use where at least some improvements are made." Appellants' Br. at 48. Yet in apparent recognition that this mere use rule undermines their modified prescriptive easement theory, the Lawsons attempt to create a new "bare minimum" mere use rule that they contend leaves them in the clear. Appellants' Br. at 48. The problem is that this new rule is unsupported by their (again non-precedential) caselaw, *Hall v. Reasoner*, 873 N.W.2d 775 (Table), 2015 WL 8310402, *2 (Iowa Ct. App. Dec. 9, 2015) (requiring that a modified prescriptive

easement claimant demonstrate she "improved" the property), and is contravened by the Iowa Code and an unbroken line of Iowa Supreme Court opinions, *Brede*, 706 N.W.2d at 829 (explaining that maintenance activities that ensure a pathway is passable are inadmissible evidence of mere use).

D. The Lawsons' Mere Use of the Footpath Is Not Admissible Evidence.

In addition to the Lawsons' labor and expenditures not being substantial, they also are not "independent of" the easement's "use," and therefore cannot supply the evidence they need to prevail. Iowa Code § 564.1 ("[B]ut the fact of adverse possession shall be established by evidence distinct from and independent of its use[.]"). Costs associated with maintaining the footpath are not considered in the legal analysis because they flow from the use itself. *Brede*, 706 N.W.2d at 829 ("The occasional placement of gravel and grading simply ensured that the driveway would be passable and hence, usable."); *Hicks v. Franklin Cnty. Auditor*, 514 N.W.2d 431, 441 (Iowa 1994) (filling in a ditch was not independent of the use of the land); *Roberts v. Walker*, 30 N.W.2d 314, 318 (Iowa 1947) (maintaining, working, and grading a roadway was not independent of its use). These use-based costs do not result in inequitable property improvement, and the notions of promissory estoppel that underpin the doctrine of modified prescriptive easement therefore do not apply.

Stated more simply, fixing the property damage that your permissive use

causes is vastly different from improving the property in reliance on the record owner's permission to such a degree that the owner's rights are defeated.

Thus, the Lawsons' claim for modified prescriptive easement must fail. The Lawsons' alleged costs were not independent of their use of the footpath and cannot constitute evidence of a prescriptive easement. *E.g.*, Day 2-5 Trial Tr. 417:16-20. Even assuming that is not so, the Lawsons' costs are not substantial under Iowa Supreme Court case law.

V. The District Court Correctly Found That Easement by Acquiescence Does Not Give the Lawsons an Easement.

A. Preservation of Error.

The Finks agree that the Lawsons preserved error on this issue.

B. Scope and Standard of Review.

The scope and standard of review is de novo, the same as Issues I, II, III, and IV.

C. Easements Cannot Be Created by Acquiescence.

The Lawsons do not address the threshold question of whether easements can be created by acquiescence. Appellants' Br. 53-58. Under Iowa law, they cannot. The doctrine of easement by acquiescence cannot be used "where a party is seeking to establish a new easement as opposed to defining the boundaries of an existing easement." *Slechta v. Jewett*, 841 N.W.2d 355 (Table), 2013 WL 5962924, at *3 (Iowa Ct. App. 2013). As the court of appeals explained

in *Slechta*, there are four ways of creating an easement, and easement by acquiescence is not one of them. *Id.* (citing *Nichols*, 687 N.W.2d at 568).

The Lawsons' appeal to easement by acquiescence is therefore out of place here because they do not have a valid existing easement. They instead rely on the doctrine to create—not define—an easement. This is impermissible as a matter of law. *Id.* Thus, the District Court correctly found that easement by acquiescence fails.

D. Easement by Acquiescence Fails for Many Other Reasons.

Even supposing an easement can be created through acquiescence (it cannot), the Lawsons' claim still would fail because they (i) attempt to substantially change the course of the easement, (ii) have not shown the Beckers acquiesced to the easement as an easement and not as a mere license, and (iii) did not demonstrate the footpath has definite and certain boundaries.

A boundary by acquiescence can be established:

> If 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, such recognized boundaries and corners shall be permanently established.

Iowa Code § 650.14.

Acquiescence is:

> the mutual recognition by two adjoining landowners for ten years or more that a line, definitely marked by fence or in some manner, is the dividing line between them. 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.

Skow v. Goforth, 618 N.W.2d 275, 281 (Iowa 2000) (citation omitted).

"The line acquiesced in must be known, definite and certain." *Mensch v. Netty*, 408 N.W.2d 383, 386 (Iowa 1987); *Egli v. Troy*, 602 N.W.2d 329, 333 (Iowa 1999) (explaining that the boundary must be "definitely marked by a fence or in some manner"). If not, there can be no easement by acquiescence. *Mensch*, 408 N.W.2d at 386 (finding no easement because there was not a "plainly discernible" line).

Boundary by acquiesce is a doctrine at home in title disputes, *see Croell Redi-Mix, Inc.*, 767 N.W.2d 421 (Table), 2009 WL 778760, at *5 ("[defendant's] testimony at trial shows that [the landowner] acquiesced to [the defendant's] *use* of the land adjacent to his property, not to his *acquisition* of it"), but has been narrowly extended to settle unclear easement boundaries for driveways, *Mensch*, 408 N.W.2d at 386 ("We have extended the doctrine of acquiescence to establish the boundaries of a driveway easement.").

Each of the driveway-boundary acquiescence cases involves a preexisting easement that a party seeks to expand outward, while otherwise leaving the course or path of the easement the same. *E.g.*, *Skow*, 618 N.W.2d at 281

(requesting "several f[oo]t" expansion); *Mensch*, 408 N.W.2d at 386 (seeking four foot expansion); *Thompson v. Schappert,* 294 N.W. 580, 582 (Iowa 1940) (asking to expand the driveway to its wider dimensions when purchased). Importantly, none of the decisions have allowed a wholesale shift of an easement to a different route—a new easement. *See generally id.*

But the Lawsons attempt to do that here. They seek to substantially alter the 2002 easement by redirecting it away from the described route, instead of marginally expanding its stated width. *See* Appellants' Br. at 55. This is not permitted by Iowa's limited acknowledgement of easement boundaries by acquiescence and should fail as a matter of law.[9]

Even if the Lawsons' novel theories are supported by caselaw (not so), they cannot establish an easement by acquiescence in any event. To do so, the Lawsons must produce evidence that some dividing line was acquiesced to by the Larry Becker Trust as the boundary *of an easement*, rather than as the boundary *of a permissive license*, for example. Further, they have to prove the scope of a boundary line that is clearly demarcated. They did neither by "clear"

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[9] Moreover, while not yet recognized by Iowa law, it widely accepted that easement by acquiescence "does not apply where the question presented is the scope of the rights granted by an express easement." 11 C.J.S. *Boundaries* § 145. The Lawsons use it for that purpose here. Appellants' Br. at 55 (arguing the Beckers acquiesced to the path as "the location of the easement referenced in the attached Easement and Agreement").

evidence. *Egli*, 602 N.W.2d at 333.

One who claims an easement boundary by acquiescence must demonstrate that the owner of the alleged servient tenement "acquiesced in such claim either in terms or by conduct inconsistent with a contrary claim." *See Cotter v. Kadera*, 178 N.W. 321, 322 (Iowa 1920) (emphasis added). Applied here, the Lawsons must prove not only that the Larry Becker Trust acquiesced to their use of the footpath, but also that the acquiescence was inconsistent with the trust merely granting them permission to use the path.

An appeal to silence is supposed to have met this burden. Appellants' Br. at 55. In fact, however, the trial evidence only supported that the Beckers gave the Lawsons a mere license or permission to use the footpath. D0343, Linda Lawson Depo. Excerpt at 28:34-29:2 (Aug. 25, 2023) ("Q. And so it would be fair to say that the Beckers gave you and your husband permission to cross their property like you've been using it now? A. Yes."). This permissive use does not establish acquiescence. *See Webb v. Arterburn*, 67 N.W.2d 504, 512 (Iowa 1954) (finding no driveway easement by acquiescence in part because the use may have been a "neighborly courtesy" that was a mere "license or permission to pass over the [owner's] ground").

Additionally, the Lawsons did not show by clear evidence what the "definite and certain" boundary line of the acquiesced easement would be.

Mensch, 408 N.W.2d at 386. The Lawsons' land surveyor examined the area, however, and testified that the footpath was identifiable only because it had been mown. Day 2-5 Trial Tr. 444:8-15; *see* Day 2-5 Trial Tr. 468:17-18. But boundary lines must be "definitely marked by a fence or in some manner[.]" *Egli*, 602 N.W.2d at 333 (citation omitted). Mowing is not enough. In addition, the Lawsons have no proposed legal description, and they have not produced clear and convincing evidence as to what definite and certain lines clearly demarcated the footpath over the last decade. *Mensch*, 408 N.W.2d at 386 ("We may not resort to conjecture and speculation in locating the boundary lines."). Thus, the District Court correctly denied the Lawsons' easement by acquiescence defense.

VI. The District Court Properly Bifurcated Trial.

A. Preservation of Error.

The Finks agree that the Lawsons preserved error on this issue.

B. Scope and Standard of Review.

"Bifurcation of a trial is a discretionary matter, which [the Court] review[s] for an abuse of discretion." *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 683 (Iowa 2020). "An abuse of discretion may be shown when the district court's ruling is based on an erroneous application of the law." *In re Marriage of Thatcher*, 864 N.W.2d 533, 537 (Iowa 2015) (cleaned up).

C. Trial Was Properly Bifurcated Because Equitable Issues Are Tried First.

The Finks made a commonsense request for the District Court to quiet the Finks' land ownership before asking a jury to decide whether the Lawsons interfered with that ownership. The request met the criteria of Rule 1.914 and precedent. *E.g.*, *State v. Simmons*, 290 N.W.2d 589, 594 (Iowa 1980) ("Trial of the equitable issues first is the rule rather than the exception.").

The Lawsons resisted. They wanted their prescriptive, implied, and other easement theories tried (or heard) by a jury even though Iowa law so clearly establishes that when it comes to matters of title, no right to a jury exists. *E.g.*, Iowa Code § 649.6; *Brede*, 706 N.W.2d 824 (bench trial for easement claims). On appeal, the Lawsons continue arguments that bifurcation took away rights guaranteed by the Iowa Constitution. They are wrong.

The Lawsons misread *Morningstar* in asserting they were entitled to a jury trial of the Finks' tort claims before the quiet-title claim was tried in equity. *Morningstar v. Myers*, 255 N.W.2d 159, 161 (Iowa 1977). In *Morningstar*, the court confronted a fraud claim rooted in a forged-deed allegation and a quiet-title counterclaim which necessarily decided the forgery issue in establishing land ownership. The court acknowledged the general principle that "equitable issues should be tried first," *id.* at 161, but found a problem where the application of that principle circumvented a jury trial of the tort claim, *id.* at 162. In simpler

terms, trying the quiet-title case first decided the forged-deed issue and therefore the fraud claim without submitting the same to a jury. *Id. Morningstar* therefore stands for the unremarkable proposition that equity cannot first decide what the Constitution makes inviolate.

Here, there is no such issue. Iowa recognizes that competing claims to real estate ownership—quiet title, prescriptive easement, easement by implication—are equitable proceedings. Iowa Code § 649.6. The question for equity of what ownership the Finks received and hold by virtue of the conveyances in 2020-2021, and whether the Lawsons acquired <u>before that time</u> some sort of superior prescriptive or implied right, is notably and logically distinct from <u>a later invasion</u> of the Finks' ownership rights post-conveyance. For example, the Lawsons' entry upon the disputed real estate before the Finks' acquisition is relevant for quieting title and the Lawsons' defensive claims. But for the tort claims, what matters is the Lawsons' entry onto the real estate after the Finks' acquisition.

Unlike *Morningstar*, there is no overlap between these claims, and more tellingly, there is nothing about quieting title that necessarily decides whether the Finks' ownership was later trammeled upon and damaged by the Lawsons. Whatever jury right the Lawsons want to see in the Finks' tort claims is fully preserved.

The Lawsons' alternative argument about preclusive fact findings with respect to the elements of their reformation, prescriptive easement, and other defenses, Appellants' Br. at 61-62, is little more than a position founded on their miscomprehension of what a quiet title claim is and is not. To be sure, now that the District Court declared the Finks the free-and-clear title holders of the land, they can recover for the Lawsons' trespass, conversion, and invasion of privacy on that land. But the bulleted list of questions in the Lawsons' brief which the District Court resolved in quieting title in the Finks does not resolve the Lawsons' liability on the tort claims. The Lawsons' right to a jury trial is alive and well.

CONCLUSION

For the reasons above, the Finks respectfully request that the Court affirm the ruling of the District Court.

REQUEST FOR NON-ORAL SUBMISSION

The Finks do not request oral argument because the issues can be decided on the briefs alone.

Dated: May 2, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2024, I electronically filed the foregoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.315(1), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

Signed: /s/ Abram V. Carls

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(i)(1) because this brief contains 8,629 words, excluding the parts exempted by Iowa Rule of Appellate Procedure 6.903(1)(i)(1). This brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(h) because this brief has been prepared in a plain, proportionally spaced typeface using Microsoft Word in 14 point, Calisto MT font.

Signed: /s/ Abram V. Carls