IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-1845

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' APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS' DECISION DATED FEBRUARY 5, 2025

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DONALD AND LINDA LAWSON

QUESTIONS PRESENTED

I. WHETHER, AS A QUESTION OF FIRST IMPRESSION IN IOWA, A WRITTEN INSTRUMENT MAY BE PROPERLY REFORMED TO EXPRESS THE TRUE INTENT OF THE PARTIES WHEN ONE PARTY IS IMPROPERLY REFERENCED IN THE INSTRUMENT.

II. WHETHER, AS A QUESTION OF FIRST IMPRESSION IN IOWA, THE "CONTROL TEST" SHOULD BE ADOPTED AND APPLIED WHEN EVALUATING EASEMENTS BY IMPLICATION.

III. WHETHER ARTICLE I, SECTION 9 OF THE IOWA CONSTITUTION AND THIS COURT'S DECISION IN *MORNINGSTAR v. MYERS* REQUIRE DISTRICT COURTS TO TRY TORT CLAIMS FOR MONEY DAMAGES TO A JURY FIRST, BEFORE RELATED QUIET TITLE CLAIMS ARE SUBSEQUENTLY TRIED TO THE DISTRICT COURT SITTING IN EQUITY.

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STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals concluded it lacked the legal authority to reform a written easement agreement to reflect the true intention of the parties. *Slip op.* at pp. 5 – 6. The Court of Appeals concluded reformation of the written instrument to properly reflect the correct trust would amount to a "new agreement" instead of merely correcting a mistake in the expression of the parties' true intentions. *Slip op.* at p. 6. This Court has yet to decide a case involving the reformation of a written instrument where a party was improperly identified in the written instrument (or was omitted from the instrument altogether). In resolving this question of first impression in Iowa, this Court should join the growing number of jurisdictions permitting reformation to correct the name of a party to a written instrument to align it with the true intentions of the parties. If the Court of Appeals decision is allowed to stand, district courts facing similar factual circumstances in the future would be left without the necessary legal authority to reform a written instrument to reflect the true intentions of the parties when a signatory is improperly referenced in the instrument by virtue of a scrivener's error like the one at issue here.

Additionally, as a question of first impression in Iowa, this Court should join the growing number of jurisdictions which have adopted the "control test" when evaluating "easement by implication" claims. The Court of Appeals "agree[d] with the Lawsons that if [it] were to adopt the control test and apply it, there would be

unity of ownership in this instance and subsequent separation of title…that would satisfy the first element of an easement by implication." *Slip op.* at p. 8. This Court should accept the Court of Appeals' invitation to address this open question and provide guidance for future easement claims.

Finally, the Court of Appeals incorrectly interpreted *Morningstar v. Myers*. *Morningstar v. Myers*, 255 N.W.2d 159 (Iowa 1977) (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). The Court of Appeals decision is in direct conflict with this Court's prior directives in *Morningstar* and, as such, it must be set aside and overturned by this Court. The Court of Appeals' interpretation wrongfully deprives the Lawsons of their important constitutional guarantees affording them the right to a trial by jury on the Finks' related tort claims. IOWA CONST., Art 1, § 9. This Court should take the opportunity to reaffirm the supremacy and applicability of its decision in *Morningstar* to ensure future cases involving mixed claims are handled in accordance with the appropriate protocol carefully crafted and prescribed by this Court in *Morningstar.*

BRIEF IN SUPPORT OF APPLICATION FOR FURTHER REVIEW

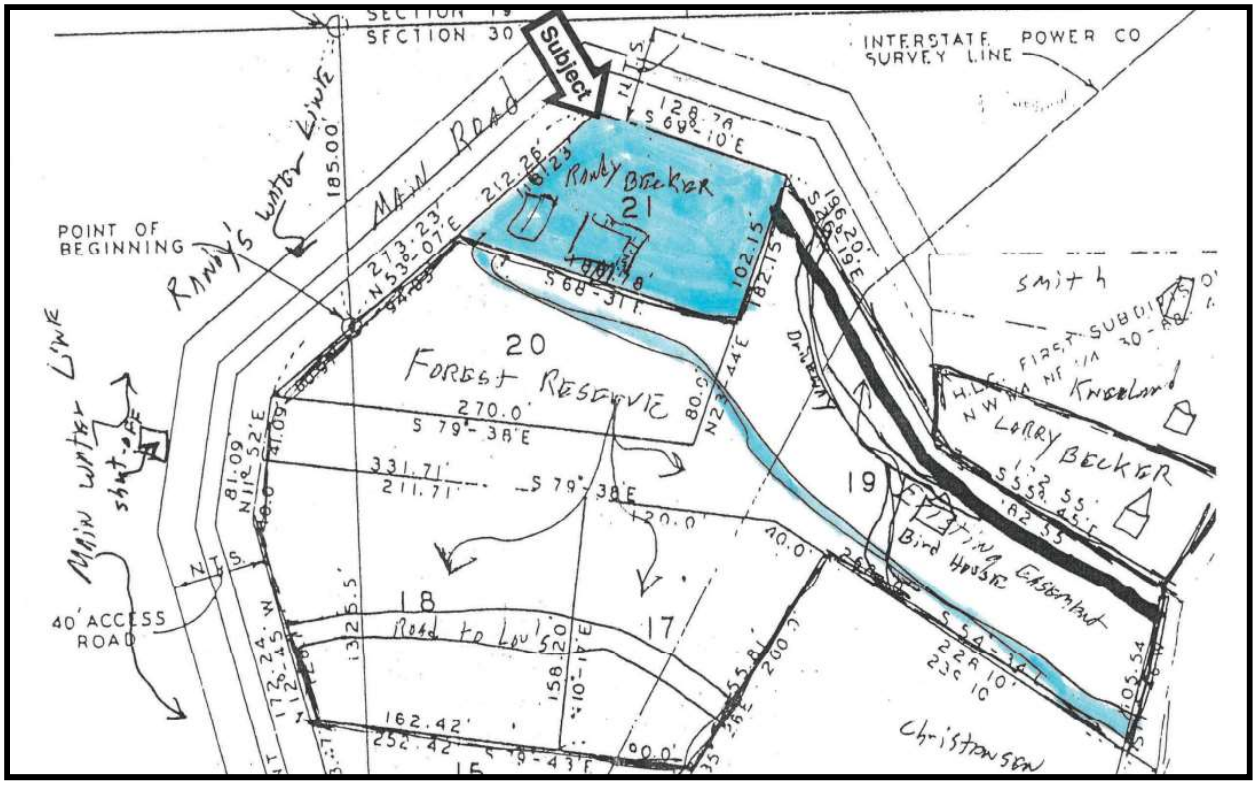
A. Factual and Procedural Background

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, 09/26/2023). When the Lawsons purchased their home 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).

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

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

As part of the purchase process, an appraisal was performed. *Id.* The appraiser personally inspected the property and identified the pre-existing path as the location of the easement. *Id.* at ¶ 4. Subsequently, the appraiser's written report contained a plat map identifying the pre-existing path as the location of the easement:

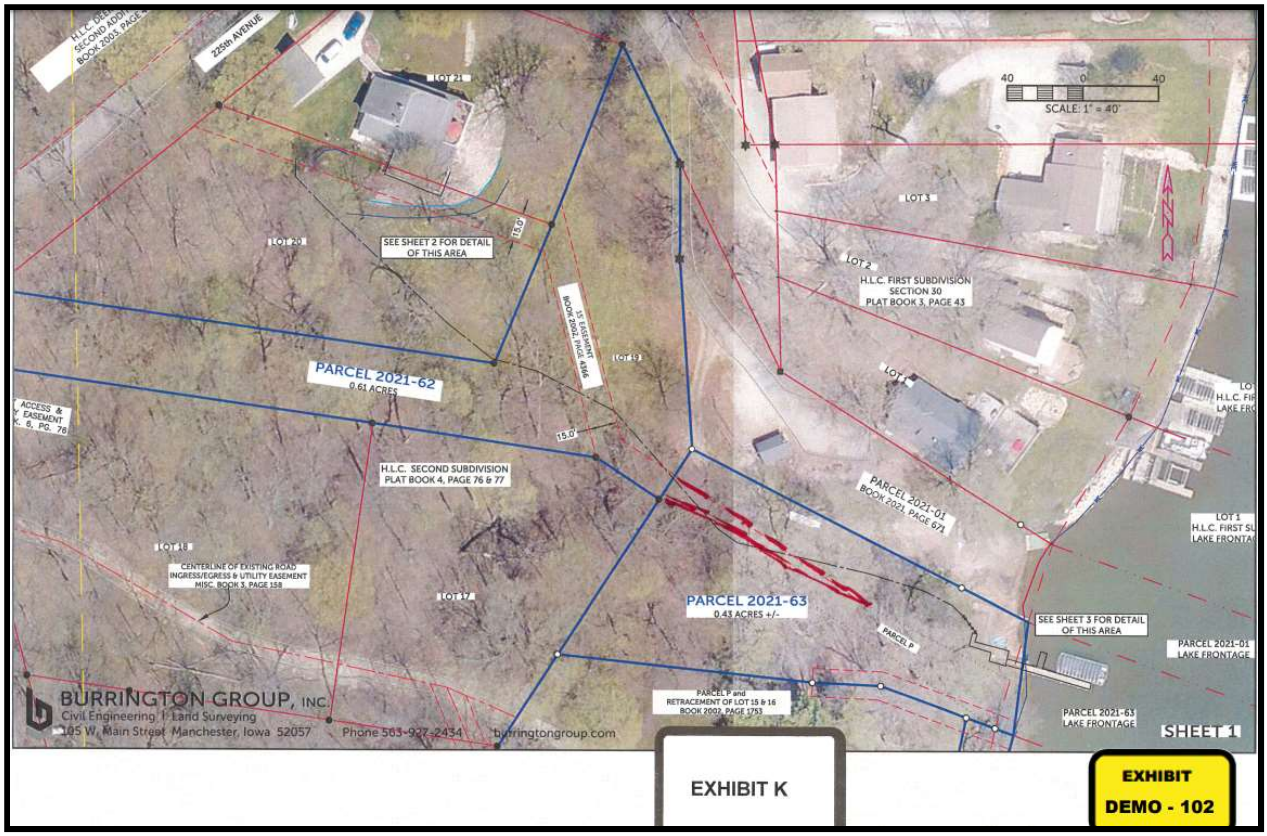


Id. at ¶ 4; (*see also,* [D0326], Appraisal Report at p. 15, Defendants' Exhibit GGG; Trial Testimony of Steven Duncan, Transcript pp. 77 – 103; Physical Item/Court's Exhibit GGG-1). A written easement agreement between the Lawsons and the Beckers was subsequently drafted and recorded. *Id.*; (*see also,*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

For the next two decades, the Lawsons enjoyed the use of the pre-existing path to reach their dock and boat hoist consistent with the plain language of the recorded easement providing "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 fill material to improve the path. *Id.* The Lawsons also registered the dock with the Iowa DNR in their name and paid the

required dock permit renewal fees over these years. *Id.* The Lawsons' activities were conducted over the course of 20 years while the Beckers utilized their neighboring cabin on the water's edge adjacent to the easement. (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 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.* Notwithstanding the open and obvious preexisting use of the path and the plain language of the easement 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," Mr. Rattenborg informed Mr. Fink that he believed the legal description contained in the Lawsons' easement technically described the easement ending before it reached the river. *Id.*



([D0332], Exhibit DEMO-102; *see also,* Exhibit XY-1, Flash Drive Containing Video Deposition Designations/Videotaped Trial Testimony of Randall Rattenborg). Armed with the knowledge of this discrepancy in the recorded easement's legal description, in April of 2021, Mr. Fink purchased the servient parcels from the Beckers' surviving heirs. ([D0355], Decree 09/26/2023 at ¶ 7).

Mr. Fink then began a multi-pronged attack on the validity of the twenty-year-old easement. Specifically, Mr. Fink argued the easement's legal description showed the easement running beneath the deck attached to the Lawsons' home, down an impassable embankment, and stopping well short of the water's edge. *Id.* The Lawsons, their expert land surveyor, (and indeed, the Finks' own land surveyor)

acknowledged the scrivener's error incorrectly identifying the easement's location 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 scrivener's errors 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 scrivener's error in the easement agreement came to light after this litigation ensued. ([D0355], Decree 09/26/2023 at ¶ 8). Specifically, the easement was granted to the Lawsons by Mary Becker on behalf of the Mary Becker Trust. *Id.* However, 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 knowledge or consent of the other, the trial court found this scrivener's error fatal to the validity of the Lawsons' express recorded easement. The trial court also refused to reform it to align it with 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. ([D0083], Summary Judgment Ruling 05/08/2023). The Lawsons filed a timely motion to amend and enlarge the trial court's ruling. ([D0084], Motion to Amend and Enlarge, 05/23/2023). The trial court largely overruled the Lawsons' motion to amend and enlarge. ([D0087], Ruling, 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 jury trial of the Finks' tort claims for money damages[1]. ([D0057], Ruling, 11/07/2022).

Following the bench trial, the district court made factual findings adverse to the Lawsons in quieting title in favor of the Finks. ([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, 10/17/2023). The denial of the Lawsons' motion for new trial was likewise issued that same day on October 17, 2023. ([D0362], Ruling, 10/17/2023). The Lawsons filed a timely Notice of Appeal. ([D0370], Notice of Appeal 11/10/2023). This appeal ensued.

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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*.

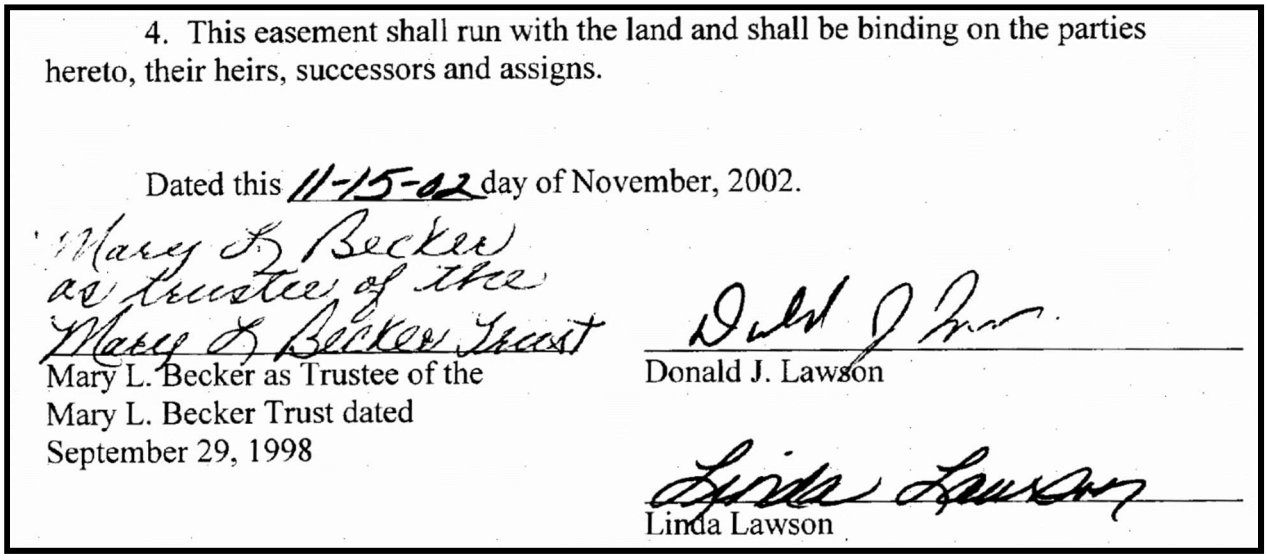
B. Argument

I. As a Matter of First Impression in Iowa, this Court Should Join the Growing Number of Jurisdictions Permitting Reformation of a Written Instrument to Reflect the True Intentions of the Parties When a Party is Incorrectly Referenced in the Instrument.

This Court has yet to decide a case involving the reformation of a written instrument where a party was improperly identified in the written instrument (or omitted from the instrument altogether). In resolving this question of first impression, this Court should take the opportunity to confirm trial courts are empowered to reform written instruments where the name of a signatory is incorrectly referenced in the document (or omitted from it altogether) when overwhelming evidence of the parties' true intent exists. Specifically, this Court should confirm reformation of the subject easement agreement may properly occur to appropriately reflect the name of Mary Becker, as Trustee of the Larry Becker Trust as a mere mistake in the expression of the parties' agreement. *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 in connection with the expression of the agreement).

Other jurisdictions regularly reform written instruments to express the true intent of the agreement when parties are incorrectly referenced, omitted altogether, and/or when defective signatures are later found to exist. For example, the New

York Court of Appeals found a husband's will was properly reformed to reflect his (and not his wife's) signature where they had executed their wills together and inadvertently signed the other's documents. *Matter of Snide v. Johnson*, 418 N.E.2d 656 (N.Y. Ct. App. 1981). These circumstances are analogous to the Lawsons' situation; Mary Becker inadvertently signed an easement agreement as trustee of her own trust instead of as trustee of her husband's mirror-image trust:



4. This easement shall run with the land and shall be binding on the parties hereto, their heirs, successors and assigns.

Dated this 11-15-02 day of November, 2002.

Mary L Becker
as Trustee of the
Mary L Becker Trust

Mary L. Becker as Trustee of the
Mary L. Becker Trust dated
September 29, 1998

Donald J. Lawson

Linda Lawson

([D0286], Defendants' Exhibit A). At trial, the Beckers' estate planning attorney succinctly described the "mirror image" nature of the Beckers' revocable trust agreements granting authority to one another to sell and dispose of real estate owned by the other's trust without the other's knowledge or consent. (Trial Testimony of Witness Mark Conway, Transcript pp. 307 – 325). Additionally, the drafter of the subject easement agreement, attorney E. Michael Carr, confirmed his office's role in inadvertently referencing Mary's trust in the easement agreement instead of

properly referencing Larry's trust. (Trial Testimony of E. Michael Carr, Transcript p. 296 – 304; *see also,* Affidavit of E. Michael Carr, [D0078, Attachment #2]).

Abundant authority exists in other jurisdictions supporting reformation in similar situations. For example, in *Smith v. Cram*, a father and son mortgaged certain real property. *Smith v. Cram*, 230 P. 812 (Oregon Sup. Ct. 1924). The son not only owned a portion of the property individually, but he also held half of it in trust for other family members. *Id.* Both signed the mortgage, but the son technically failed to sign the document in his capacity as trustee. *Id.* Although the son, as trustee, resisted reformation of the mortgage, the court determined reformation was appropriate because it concluded beyond a doubt that the intention of the parties was to mortgage the entire estate, including the trust estate. *Id.* The court held, "The reformation prayed for to the extent of adding the name of James Cram, Jr., as trustee, to the mortgage was one which a court of equity has power to make." *Id.* (emphasis added).

In *Ames v. Fallert,* a deed was properly reformed based upon "overwhelming evidence" that a grantee intended to convey certain property to his business corporation notwithstanding that his signature on the deed was missing altogether. *Ames v. Fallert*, 657 P.2d 224 (Or. Ct. App. 1983). In *Ames*, the deed at issue was notarized, but not signed by the plaintiff. *Id*. In finding "overwhelming evidence" of the plaintiff's intention to sign the deed and convey the property, the Oregon Court

of Appeals found it compelling that the plaintiff's wife had signed the deed for the sole purpose of clearing the title of her interest, which was consistent with an intent on the part of her husband to likewise sign the deed. *Id*.

Additionally, the court in *Ames* relied upon the fact that the parties had acted for 12 years as if their individual interests in the property had been conveyed to the grantee. *Id*. The court concluded both the wife and non-signing husband had intended to convey their interest to the grantee and that the plaintiff's failure to sign the deed was a result of a mutual mistake. *Id.* The Court thus held that the deed should be reformed to add the signature of the non-signing spouse. *Id.* The same result is warranted here, particularly where the Beckers and the Lawsons acted for more than 20 years as if the Lawsons had a valid easement.

In *Sound Around v. Hialeah Last Mile Fund VII LLC*, the court was required to determine whether a mistakenly omitted party should be added to a real estate purchase agreement through reformation as an "intended party". *Sound Around v. Hialeah Last Mile Fund VII LLC*, 2023 WL 122655 at *1 (S.D. Fla. January 6, 2023). In answering yes, the court distinguished between "adding a non-party" to an agreement versus "remediat[ing] the mistaken omission of a purportedly intended party". *Id*. at *5. ("[T]he question before this Court: whether an intended party may be bound by the terms of an instrument that it mistakenly was not party to. The answer is yes.").

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. Because the record evidence demonstrates Mary Becker was a legally authorized agent and appropriate signatory to the easement agreement in either instance, this Court has repeatedly confirmed reformation is the appropriate remedy in such situations involving a mere mistake in the expression of the contract. *Nichols v. City of Evansdale*, 687 N.W.2d 562, 570 (Iowa 2004) ("When the mistake is in the expression of the contract, the proper remedy is reformation."); *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).

The cases from other jurisdictions cited above are analogous to the present case, where the intended grantor's authorized agent (Mary Becker) signed the easement agreement on her husband's behalf, but incorrectly referenced her own mirror image trust when doing so. Rather than finding the instruments technically defective and void for want of a proper signature, they were properly reformed by

the courts in those jurisdictions to align them with the overwhelming evidence of the parties' true intentions.

Larry and Mary Becker undeniably intended to grant an express easement to the Lawsons. In doing so, their legal counsel has acknowledged his mistake in the expression of the easement agreement. (Trial Testimony of Witness Steve Carr, Transcript at pp. 274 – 293; Trial Testimony of Witness E. Michael Carr, Transcript at pp. 301 - 302). Thus, the proper remedy is reformation. *Nichols*, 687 N.W.2d at 570 ("When the mistake is in the expression of the contract, the proper remedy is reformation.").

This Court should take the opportunity to clarify its reformation jurisprudence to confirm written instruments may, in fact, be properly reformed in cases involving a party who was misidentified in the instrument. *Id.* If the Court of Appeals decision is allowed to stand, property owners would face the daunting prospect of losing property rights decades later because a written instrument failed to reflect the true intentions of the parties when a signatory is improperly referenced by virtue of a simple scrivener's error like the one at issue here. For all of these reasons, and those described below, this Court should grant further review of the decision issued by the Court of Appeals.

II. As a Matter of First Impression in Iowa, this Court Should Adopt and Apply the "Control Test" When Evaluating the Lawsons' Easement by Implication Claim.

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*.

A fact-specific inquiry is required to analyze the intent of the parties when investigating the existence of an easement by implication. *Tamm, Inc. v. Pildis*, 249 N.W.2d 823, 838 (Iowa 1976); *see also,* 81 Am. Jur. Proof of Facts 3d 199 § 14. In order for 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). Thus, "[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*. 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*, 249 N.W.2d at 838.

Disputes arise 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 have adopted a relaxed approach favoring the Lawsons recognizing the common authority of an entity or person to control the related parcels, instead of reflexively relying on strict legal ownership. *Id.* This is

known as the "control test."[2] *Id*. The "control test" recognizes an individual or entity with common ownership of parcels, "but [who] was not technically the owner at all, [or] a dominant interest or influence" in the trust or corporation owning the parcels, can still 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).

A majority of courts confronting similar issues have adopted and applied the "control test" in finding unity of ownership for separation of title purposes in other valid land transactions. *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. This Court should likewise adopt the "control test." Considering the judicial preference for resolving conflicts in granting easements in favor or grantees over grantors, the Lawsons should undeniably prevail here. *Schwob v. Green*, 215 N.W.2d 240, 242–43 (Iowa 1974); 81 Am. Jur. *Proof of Facts* 3d 199 § 14. In cases of ambiguity or doubt, "a grant of an easement will ordinarily be construed in favor of the grantee dominant owner." *Id.*

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[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.

In the case at bar, 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. The Beckers' subsequent grant of an express easement to the Lawsons constitutes the requisite separation of title necessary to establish an easement by implication. *Dabrowski*, 442 P.3d 811.

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 two decades ago. 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.

In its decision, the Court of Appeals "agree[d] with the Lawsons that if [it] were to adopt the control test and apply it, there would be unity of ownership in this instance and subsequent separation of title…that would satisfy the first element of an easement by implication." *Slip op.* at p. 8. As for the remaining elements of the Lawsons' easement by implication claim, substantial record evidence exists concerning those remaining elements. 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 river prior to the Lawsons' purchase of their home on November 15, 2002 [Transcript at pp. 34 – 37];

- Defendant Donald Lawson's observations concerning the location and appearance of the pre-existing path to the river prior to the Lawsons' purchase of their home on November 15, 2002 [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 river when he visited the property prior to the Lawsons' purchase of the home [Transcript at pp. 85 – 88].

([D0295], Plaintiffs' Exhibit III-13)[3].

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[3] The Court of Appeals apparently overlooked the credible witness testimony identified in each of these bullet points when it incorrectly concluded "even if we were to adopt the control test as the Lawsons urge, they could not satisfy the second element necessary for an easement by implication." *Slip op.* at p. 9. Interestingly, the trial court never made a specific factual finding as to whether the condition of the easement path reflected continuous use, as opposed to temporary use, when the Lawsons purchased the home.

In evaluating the Lawsons' easement by implication claim, this Court should adopt and apply the "control test" recognized by virtually every other court confronted with similar facts.

III. The Court of Appeals Decision Below is in Direct Conflict with this Court's Decision in *Morningstar*.

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) (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 with 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 district court erred when it conducted a bench trial on the quiet title claim before the tort claims for money damages were decided. *Id.* Because the trial court's Decree likely 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 the tort claims 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 intend to claim significant money damages in connection with their tort claims sounding in trespass, conversion, and invasion of privacy, etc. ([D0384], Motion for Stay, Attachment at p. 4). By trying the equitable quiet title

action first, the trial court made adverse findings against the Lawsons which will likely have preclusive effect on the subsequent jury proceedings, such as:

- 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 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 findings identified above are all within the province and ordinary understanding of a layperson jury. Such findings can be 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 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 sounding in tort for trial first, prior to any subsequent equitable quiet title proceedings. *See Morningstar*, 255 N.W.2d 159. The trial court and the Court of Appeals disregarded this Court's directives in *Morningstar* resulting in due process violations in connection with the subsequent jury proceedings on the Finks' tort claims. Thus, this Court should grant further review to reassert the supremacy of its decision in *Morningstar* requiring the application of the protocol carefully crafted by this Court.

CONCLUSION

For all of these reasons, this Court should grant further review of the appellate decision issued by the Court of Appeals below and find in favor of the Lawsons.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of IOWA R. APP. P. 6.903(1)(i)(1) because this brief contains 5,096 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.

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CERTIFICATE OF SERVICE

The undersigned certifies a copy of the foregoing document was filed on the on the 25th day of February, 2025 via the Iowa Electronic Document Management System (EDMS) with service to be accomplished upon the following persons via EDMS:

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