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## LEGAL UPDATE

Legal Services Division



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### IOWA SUPREME COURT DECISION — PREDEATH TRANSFER OF FARM PROPERTY

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **In the Matter of the Estate of Francis O. Glaser**

**Filed April 30, 2021**

**No. 19-0008**

[www.iowacourts.gov/courtcases/8673/embed/SupremeCourtOpinion](http://www.iowacourts.gov/courtcases/8673/embed/SupremeCourtOpinion)

**Factual and Procedural Background.** In December of 2007, Francis O. Glaser received a letter from the Iowa Department of Revenue (DOR) informing him of delinquent taxes. In May, Glaser received an assessment for back taxes, and in June, DOR commenced a collection action. Beginning January 7, 2008, DOR held multiple tax liens on Glaser's property, and the combined amount owed by Glaser totaled over \$100,000 at the time of Glaser's death on September 9, 2014.

Prior to Glaser's death, Glaser became close friends with Sherry Kindsfather and on September 9, 2011, Glaser transferred an undivided one-half interest in a farm to Judy Shreve, Kindsfather's mother. On September 19, 2012, Shreve transferred this farm interest to Kindsfather. On November 19, 2012, Glaser transferred all of his interest in three separate property lots to Kindsfather. The apparent consideration for the transfer of the lots was one dollar for each lot.

Glaser died intestate, and DOR asked the administrator of the estate (Administrator) to file a motion to set aside the transfers from Glaser to Kindsfather. On June 28, 2016, the Administrator filed a motion (original pleading) to set aside the transfers of the lots made on November 19, 2012, and any transfers of property made by Glaser three years before his death on the grounds the transfers were made to defraud creditors.

On April 5, 2018, Kindsfather filed a pretrial motion claiming the Administrator's list of exhibits submitted prior to the trial indicated the Administrator's intent to include a new claim involving a separate real estate transaction beyond the property transaction specifically identified in the original pleading, and that it would be improper as the statute of limitation period for bringing such a claim had expired. During trial, Kindsfather objected to evidence submitted regarding the transfer of the farm interest. At the close of evidence, the Administrator was granted leave to amend the original motion to include a claim regarding the separate transfer of the farm interest. Ultimately, the district court found that the transfers of the lots and the farm interest were designed to defraud creditors and should be set aside.

The Iowa Court of Appeals affirmed the district court's decision regarding the lots, but reversed the decision regarding the farm interest on the basis that the amendment did not relate back to the date of the original pleading, and therefore, inclusion of the farm interest was barred by the statute of limitations. The Iowa Court of Appeals further found that Iowa Code section 633.368 (relating to property of payment for creditor's

claim) authorized the Administrator to recover the entirety of the lots although their combined value was more than was necessary to satisfy all debts and charges against Glaser's estate.

The Administrator and DOR thereafter filed an appeal to the Iowa Supreme Court (Court) from the denial of the Administrator's motion to set aside the transfer of the farm interest.

**Issues.** 1. Whether an amendment to an original pleading relates back to the date of the original pleading.  
2. Whether Iowa Code section 633.368 allows a fiduciary of an estate to recover all fraudulently transferred property or only the amount necessary to pay the debts of the decedent.

**Holding.** In a 6-0 decision, the Court held that an amendment to include a claim to set aside a transfer of property does not relate back to the date of an original pleading if there were no references or attempted references to the property or the transfer of the property in the original pleading. The Court further found that Iowa Code section 633.368 only authorizes a fiduciary of an estate to recover and sell property to the extent necessary to satisfy all debts and charges against the estate.

**Analysis.** The Court noted that Iowa Rule of Civil Procedure 1.402(5) allows an amendment to a pleading to relate back to the date of the original pleading. However, the relation back doctrine is based on notice, and the Administrator would only be able to relate back an amended pleading if the amendment arose out of "the conduct, transaction, or occurrence" set forth or attempted to be set forth in the original pleading.

The Court noted that the farm interest was never discussed in the original pleading. The original pleading only specifically identified the lots, contained exhibits identifying the lots, and stated that the transfers of the lots bore "many of the 'badges' of fraud." The farm interest was never identified, given an exhibit, or referred to as potentially fraudulent. Although the original pleading did contain a general request for relief to include the property in the gross estate transferred within three years of Glaser's death, the term "property" was defined in the original pleading as the three quitclaim deeds of the lots. As the original pleading appeared to be specific to the lots, the Court stated there was nothing in the pleading that would have put Kindsfather on notice that the Administrator believed it had a claim to set aside the transfer of the farm interest. Due to the lack of notice in the original pleading regarding the farm interest, the Court determined the addition of the farm interest in the Administrator's amendment was outside the scope of the "conduct, transaction, or occurrence" set forth in the original pleading, and therefore, the claim to set aside the transfer of farm interest did not relate back to the original pleading.

In determining the amount the Administrator was allowed to recover from fraudulent transactions, the Court identified Iowa Code section 633.368 as the applicable statute. To ascertain the extent to which Iowa Code section 633.368 applies, the Court considered the context of the provision. While the statute does state that property liable for payments of debts and charges against a decedent's estate shall include *all property* transferred... with intent to defraud..., the statute also states "...so far as necessary for the payment of the debts and charges..." (emphasis added). The Court determined that the statute indicates a limited purpose for the satisfaction of debts and charges. Although the Administrator claimed to have a duty to protect the interest of heirs, the statute does not vest the Administrator with any power beyond the payment of creditors. As such, the Court held that although Iowa Code section 633.368 allows an administrator to sell property to satisfy the debts of a decedent, an Administrator cannot sell any property beyond what is necessary to satisfy those debts, and any amounts obtained from a sale in excess of the amount necessary to pay the debts shall be paid to the transferee.

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