

CASE NO. A05-1774

State of Minnesota In Court of Appeals

In the Matter of the Vera Lyons Marital Trust Created Under
Article 4 of the Last Will and Testament of M. Arnold Lyons,
Dated October 9, 1985.

File No. 27-TR-CV-04-125

In the Matter of the M. Arnold Lyons Family Trust Created Under
Article 4 of the Last Will and Testament of M. Arnold Lyons,
Dated October 9, 1985.

File No. 27-TR-CV-04-126

In the Matter of the Vera Lyons Revocable
Trust Created Under Agreement, Dated May 31, 1988.

File No. 27-TR-CV-04-127

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Argument	1
1. <u>Statutory Change Does Not Avoid 150 Years of Case Law</u>	1
2. <u>Mistake of Law Has Not Occurred</u>	2
3. <u>Respondent's Appendix is in Error</u>	2

TABLE OF AUTHORITIES

CASES	PAGE
<u>Estate of Kokjohn</u> , 531 N.W. 2d 99, 102 (Iowa 1995)	2
<u>In Re Estate of Schroeder</u> , 441 N.W. 2d 527, 531 (Minn. App. 1989)	2

STATUTES AND RULES	PAGE
Minn. Stat. § 524.2-603 (1993)	1

ARGUMENT

1. Statutory Change Does Not Avoid 150 Years of Case Law. At Page 9 of Respondent's Brief it is argued that a Legislative change to Minn. Stat. § 524.2-603 (1993) "removed the obligation to ascertain a testator's intent solely from the Will... ." The difficulty with this argument is that the above cited statute directing the Probate Court to search for the intent of the testator within the Will itself was adopted in 1975 and merely reflected the more than 100 years of Minnesota jurisprudence, during which time all of the rules which we presently use for the construction of Wills, were developed. The statute as originally written merely reflected existing case law.

During the period in which the original statutory language was in effect, 1975 through 1994 (statutory change effective January 1, 1996) there is no reference to Minn. Stat. § 524.2-603 in the body of case law developed during that 20-year period. While the statute was in effect in its original form, the courts continued to rely upon the body of case law developed during more than 100 years of Minnesota jurisprudence regarding the construction of Wills.

In addition, since the statute was changed effective January 1, 1996, there is no instance in which the Appellate Courts have construed the statutory change in a way which would release the Trial Courts from their obligation to determine the testator's intent from the Will itself. The Appellate Courts have continued to rely upon the body of existing case law in construing Wills.

2. **Mistake of Law Has Not Occurred.** Respondent presents the issue in this case as a “mistake of law” and thereby seeks to avoid application of the series of legal concepts which have traditionally been used by the courts to analyze the testator’s intent. However, there is no mistake of law here, there is merely a mistake as to the legal consequences of facts which were well-known to the Decedent and her legal counsel. A mistake as to the legal consequences of facts which are known to the Decedent cannot form the basis for re-writing the Will to take assets from one beneficiary and give those assets to another. See Estate of Kokjohn, 531 N.W. 2d 99, 102 (Iowa 1995) (testator’s mistaken belief that he could undo a joint bank account by Will did not justify considering extrinsic evidence). See also In Re Estate of Schroeder, 441 N.W. 2d 527, 531 (Minn. App. 1989) (mistake cannot form the legal basis for changing a Will unless the Will is ambiguous). An alleged mistake by a testator still must be analyzed first by a finding of ambiguity, then an examination of the ambiguity informed by the surrounding circumstances and if the ambiguity persists, extrinsic evidence to clear up the ambiguity. Id.

3. **Respondent’s Appendix is in Error.** Respondent’s Appendix purports to show that Appellants were well aware of the value of the various Trusts. While the dollar amounts in Respondent’s Appendix 2 are correct, the Trustee confirms that it is the Family Trust (in which Appellants claim an interest) which contains \$665,000.00, and it is the Marital Trust which contains \$129,000.00, all dollar

amounts being approximate. Appellants have no objection to the Stipulation as so corrected.

Respectfully submitted,

ANDERSON, DOVE, FRETLAND &
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