STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1420

In the Matter of the Estate of: Mathew Joseph Tomczik, Deceased.

Filed May 23, 2022
Reversed and remanded
Slieter, Judge
Dissenting, Segal, Chief Judge

Hennepin County District Court
File No. 27-PA-PR-21-479

Richard L. Hendrickson, Osseo, Minnesota; and

Karen R. Cole, Minneapolis, Minnesota (for appellants Calvin and Patricia Headley)

Chad M. Roggeman, Matthew W. Moehrle, Rajkowski Hansmeier, Ltd., St. Cloud, Minnesota (for respondent Michael Tomczik)

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Slieter, Judge.

SYLLABUS

When a wife is named as a devisee in an unambiguous will, a devise to "my wife's heirs" does not fail solely because the marriage is dissolved and revocation of the wife's devise occurs pursuant to Minn. Stat. § 524.2-804, subd. 1 (2020).

OPINION

SLIETER, Judge

This is an appeal of the district court's judgment concluding that appellants—parents of decedent's former wife—are not devisees pursuant to decedent's will. Appellants argue they are devisees pursuant to the unambiguous residual clause of the will, which devises one-half of the residual estate to the heirs of decedent's former spouse.

Pursuant to Minn. Stat. § 524.2-804, subd. 2 (2020), a former spouse who remains named in a will is deemed to have died immediately before the dissolution of the marriage. Additionally, the residual-beneficiary terms of the will unambiguously devise one-half of the residual estate to the former spouse's heirs. Therefore, we reverse and remand.

FACTS

The facts of this case are not disputed. Decedent Mathew Joseph Tomczik (Mathew) and Sara Headley (Sara) married in 1992, and the district court dissolved their marriage in 2019. Mathew did not remarry and had no children before his death on January 31, 2021. Sara is currently living, has no children, and her heirs, pursuant to the intestate-succession statute, would be her parents, appellants Calvin and Patricia Headley (the Headleys). Minn. Stat. § 524.2-103(2) (1994).[1] In February 1995, Mathew executed a will, which remained unchanged until his death.

The will names Sara, if she survives Mathew, as the primary beneficiary of the residue of his estate. If she does not survive Mathew, the residue of his estate is to be distributed as follows:

> 3.4 If any interest is not effectively disposed of by the preceding provisions of this article, one half (1/2) to my heirs-at-law and *one-half (1/2) to my wife's heirs-at-law*. The heirs-at-law of each of us shall be determined (as of the date of death of the survivor of my husband[2] and me) under, and take the shares prescribed by, Minnesota statutes of intestate succession

[1] We apply the 1994 statutes because the will dictates that heirs are determined according to the laws of intestate succession in effect when the will was executed.

[2] The parties do not dispute that "husband" is a typographical error and should be "wife."

> in force at the execution of this Will, applied as if each of us had then died intestate.[3]

(Emphasis added.)

The will nominates Mathew's brother, respondent Michael Tomczik (Michael) as personal representative. Following Mathew's death, Michael petitioned the district court for a formal probate of the will and for his appointment as personal representative. The petition identified Mathew's siblings as heirs and devisees,[4] identified Sara as having no legal interest, and did not identify the Headleys. The Headleys objected to the petition because, as Sara's heirs, they had been wrongfully omitted as devisees.

The Headleys and Michael cross-moved for summary judgment. The district court granted Michael's motion for summary judgment based on its determination that the will's devise of one-half of the residue of the estate to the Headleys as Sara's heirs failed as a matter of law. The Headleys appeal.

ISSUE

Does the statutory revocation of a devise to a former spouse pursuant to Minn. Stat. § 524.2-804, which requires the probate court to consider the former spouse to have died immediately before the dissolution, also cause the unambiguous residual devise to the heirs of the former spouse to fail?

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[3] The will, in article four, makes the same division of the proceeds of the life insurance trust if decedent is survived by neither his spouse nor descendants. Because this article is subject to the same interpretation, we need not separately address it.

[4] Heirs are persons "entitled under the statutes of intestate succession to the property of a decedent." Minn. Stat. § 524.1-201(28) (2020). Devisees are persons "designated in a will to receive" real or personal property. *Id.*, (13), (12) (2020).

ANALYSIS

"[Appellate courts] review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). Questions of law involving the interpretation of a statute are reviewed *de novo*. *In re Est. of Jotham*, 722 N.W.2d 447, 450 (Minn. 2006).

Similarly, this court reviews *de novo* whether the language of a will is ambiguous. *In re Zagar*, 491 N.W.2d 915, 916 (Minn. App. 1992) ("Whether the language of a will is ambiguous is a question of law which the reviewing court may determine."); *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 596 (Minn. App. 1995) (concluding that questions of law are reviewed *de novo*). "It is the cardinal rule of will construction that the intention of the testator, as expressed in the language used in the will, shall be controlling if it is not inconsistent with the rules of law." *McNiff v. Olmsted Cnty. Welfare Dep't*, 176 N.W.2d 888, 891 (Minn. 1970) (citing *In re Ordean's Will*, 261 N.W. 706, 708 (Minn. 1935)). "[I]ntention which the testator may have had, but did not express in his will, cannot be considered." *In re Cosgrave's Will*, 31 N.W.2d 20, 25 (Minn. 1948). When the intent of the testator is clear from the language of a will, we do not consider "what he meant to say and did not or what he might have said if he had thought of it." *In re Silverson's Will*, 8 N.W.2d 21, 23 (Minn. 1943). Doing so would add words to the will, and "the court cannot supply words to bring about a claimed result." *In re Lutzi's Est.*, 123 N.W.2d 618, 624 (Minn. 1963).

When a marriage ends in dissolution and "[e]xcept as provided by the express terms of a governing instrument," the Minnesota Uniform Probate Code "revokes any revocable: disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument" which was executed prior to a dissolution of marriage. Minn. Stat. § 524.2-804, subd. 1. The effect of this revocation is that "[p]rovisions of a governing instrument are given effect *as if the former spouse died* immediately before the dissolution or annulment." *Id.*, subd. 2 (emphasis added). Wills, defined by the probate code as a "governing instrument," are subject to these provisions. Minn. Stat. § 524.1-201(26) (2020).

The district court ruled that Mathew's will is unambiguous, and this conclusion is not challenged on appeal. Additionally, the district court concluded that the phrase "my wife" was an express term indicating an intent that the devise to "my wife's heirs" was contingent on Mathew and Sara remaining married. Because the will unambiguously expresses Mathew's intent that Sara's heirs are to receive a devise, the district court erred by concluding otherwise.

Article three of the will states that Mathew "give[s] the residue of my estate . . . [t]o my wife, if she survives me. . . . If my wife does not survive me . . . one-half (1/2) to my heirs-at-law and one-half (1/2) to my wife's heirs-at-law." The will defines "my wife" as follows: "My wife's name is Sara Tomczik [now Headley] and all references in this Will to my wife or my spouse are to her only."

Because Minn. Stat. § 524.2-804, subd. 2, requires the will to be "given effect as if *the former spouse died* immediately before dissolution," the devise to Sara's heirs becomes

operative. Because heirs are defined as "the decedent's parents equally if both survive" when there are no surviving descendants, Minn. Stat. § 524.2-103, and it is undisputed that the Headleys are Sara's parents, the Headleys are devisees of one-half of Mathew's residual estate.

Michael argues that Mathew's contrary "intent is made clear by the fact that he described this class of persons [his wife's heirs] only in relation to his marital status, as opposed to listing the names of such persons." It is this fact, Michael claims, which distinguishes this matter from the basis of our conclusion in *In re Est. of Kerr*, 520 N.W.2d 512, 514 (Minn. App. 1994), *rev. denied* (Minn. Oct. 14, 1994). Because the reasoning in *Kerr* is consistent with our conclusion, we are not persuaded.

In *Kerr*, a will made a devise to "my stepdaughter, Dawn M. Valentine." 520 N.W.2d at 513-14. Kerr's son argued that "stepdaughter" expressed an intent "to make a devise to a person occupying a particular position," a position which, due to the dissolution of Kerr's marriage to the stepdaughter's mother, the stepdaughter no longer occupied when Kerr died. *Id.* at 514. In rejecting that argument, we reasoned: "nowhere in the fifteen-page will or codicil is an intent expressed to exclude the stepdaughter if she ceased to be a stepdaughter because her mother was not married to the testator at the time of his death." *Id.* Similarly, Mathew's will unambiguously defines his wife as Sara, and expresses his intent that, if she predeceases him, her heirs are to receive a devise. Again, a testator's intention is "to be gathered from the language of the will itself . . . [and] intention which the testator may have had, but did not express in his will, cannot be considered." *Cosgrave's Will*, 31 N.W.2d at 25.

Moreover, we are not persuaded by Michael's argument that a failure to specially name Sara's heirs in the will, as Kerr's stepdaughter was, is critical. A "principal attribute" of class gifts is "that the number of beneficiaries in the class may increase by birth or decrease by death between the time the instrument is executed and the time it takes effect." *Lichter v. Bletcher*, 123 N.W.2d 612, 615 (Minn. 1963). "Where an immediate gift is made to a class and the right exists to have the property distributed at once on the death of the testator, the persons constituting the class are determined as of the death of the testator." *In re Schmidt's Will*, 97 N.W.2d 441, 458 (Minn. 1959) (quotation omitted).

Naming "my wife's heirs" would have been impossible when Mathew executed the will because the members of the class were determined on his death, when the will took effect. And, because we must give this provision of the will "effect as if the former spouse died immediately before the dissolution," we determine Sara's heirs no differently than if she had died without the marriage ending in dissolution. Minn. Stat. § 524.2-804, subd. 2. Like the devisee in *Kerr*, "heirs" identifies a devisee, in this case a devisee class, and the will expresses no intent to exclude the class if the marriage ended in dissolution.[5]

Finally, Michael argues that the district court's decision "serves the logical objective of precluding families of ex-spouses from collecting a second time from an estate

[5] Michael encourages us to follow the reasoning of *In re Danca*, No. C1-98-1497, 1999 WL 232664 (Minn. App. Apr. 20, 1999), which followed the reasoning in *Hermon v. Urteago (Est. of Hermon)*, 46 Cal. Rptr. 2d 577 (Cal. Ct. App. 1995), *rev. denied* (Cal. Feb. 15, 1996). The *Hermon* court reasoned that defining a class by implicit reference to a marriage expressed an intent that the marriage survive for the devise to succeed. 46 Cal. Rptr. 2d at 581; *Danca*, 1999 WL 232664, at *2. Neither case is binding on this court and, for the reasons stated, are not persuasive.

previously divided during marriage dissolution proceedings." We discern Michael's argument to be related to the policy decision of the legislature not to extend statutory revocation by dissolution to a former spouse's heirs. Although the goal of statutory construction "is to ascertain and effectuate the intention of the legislature," we cannot disregard the letter of the law "under the pretext of pursuing the spirit" when its "application to an existing situation [is] clear and free from all ambiguity." Minn. Stat. § 645.16 (2020); *see also Ayers v. Kalal*, 925 N.W.2d 291, 301 (Minn. App. 2019) ("It is not for the courts to apply policy considerations when the law is clear."). We have no basis upon which to disagree with Michael's characterization of such an extension as a "logical objective." But only the legislature may add such an extension.

The Minnesota Uniform Probate Code is based on the Uniform Probate Code (UPC). Minn. Stat. § 524.1-101 (2020). In 1975, the legislature adopted the UPC provision revoking devises to a former spouse following dissolution of the marriage. 1975 Minn. Laws ch. 347, § 22, at 1025-26.[6] In 1990, the UPC expanded former spouse revocation to include any devise "to a relative of a divorced individual's former spouse." Unif. Prob. Code § 2-804 (amended 1997), 8 pt. 1 U.L.A. 331, 333 cmt. (2013). The Minnesota legislature, however, did not adopt the provision revoking devises to relatives of a former spouse even though it amended section 524.2-804 in 2002 to more closely

[6] This provision was originally codified at Minn. Stat. § 524.2-508 (Supp. 1975). In 1995 it was recodified at Minn. Stat. § 524.2-804. 1995 Minn. Laws ch. 130, § 13, at 322; *see also* 1994 Minn. Laws ch. 472, § 40, at 404 (repealing former statute).

match the other provisions of the 1990 UPC section 2-804.[7] *Compare* 2002 Minn. Laws ch. 347, § 2, at 672-73, *with* UPC § 2-804, 8 pt. U.L.A. 331. We cannot ignore the legislature's omission of this provision. *Cf. Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 528 (Minn. 2012) (construing a statute based, in part, on what was "a conspicuous absence" from that statute).

The law is unambiguous that *only* devises to a former spouse are revoked following dissolution of the marriage, and no other part of the will is revoked by this change in circumstances. Minn. Stat. § 524.2-508 (2020). And, treating the former spouse as deceased immediately before the dissolution when interpreting the will does not revoke other devises.

As we have recognized before, "[t]he legislature could have chosen to revoke gifts to relatives of a former spouse, but did not do so." *Kerr*, 520 N.W.2d at 514. We cannot "add words to the statute that the Legislature did not supply." *Graphic Commc'ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 691 (Minn. 2014); *see also Hayden v. City of Minneapolis*, 937 N.W.2d 790, 796 (Minn. App. 2020), *rev. denied* (Apr. 14, 2020) (quoting *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007)). Our "duty is to 'interpret the policy that the Legislature has already determined in the statutory language at issue.'"

[7] These changes included significant formatting changes, expansion to cover "governing instrument[s]," not solely wills, updated terminology, and protections for third parties. *See* 2002 Minn. Laws ch. 347, § 2, at 672-73.

Hayden, 937 N.W.2d at 796 (quoting *In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 n.10 (Minn. 2014)).

Many may agree that Michael articulates sound reasoning for his argument that devises to a former spouse's heirs should be revoked following dissolution. But the legislature has not adopted a statute reflecting that policy even though this court has previously called attention to the matter. *See Kerr*, 520 N.W.2d at 514.

DECISION

Because the unambiguous terms of decedent's will demonstrate that, upon giving effect to the will as if his former spouse died immediately before the dissolution pursuant to Minn. Stat. § 524.2-804, the former spouse's heirs are devisees, we reverse the district court and remand for further proceedings to include the Headleys as devisees.

Reversed and remanded.

SEGAL, Chief Judge (dissenting)

I respectfully dissent. I would affirm the district court's order because I conclude that, since Sara Headley (Sara),[1] the divorced spouse, is alive and did not in fact predecease Mathew Joseph Tomczik (Mathew), the bequest to Sara's heirs-at-law in the residual clause of Mathew's will was never triggered.

The residual clause in the will provides that one-half of any residue of Mathew's estate will go to "my heirs-at-law and one-half (1/2) to my wife's heirs-at-law." It then goes on to say that "[t]he heirs-at-law of each of us shall be determined (as of the date of death of the survivor of my [wife[2]] and me) under, and take the shares prescribed by, Minnesota statutes of intestate succession . . . applied as if each of us had then died intestate." The will identifies "my wife" as Sara Tomczik, but contains no similar provision naming Sara's "heirs-at-law." The heirs-at-law are defined solely by the marriage relationship between Mathew and his then-wife Sara. I believe that this fact distinguishes the present case from our opinion in *In re Est. of Kerr*, 520 N.W.2d 512, 514 (Minn. App. 1994), *rev. denied* (Minn. Oct. 14, 1994), cited by the majority.

In *Kerr*, the will identified the recipient of the contested bequest as "my stepdaughter, Dawn M. Valentine." 520 N.W.2d at 514. Thus, the will in *Kerr* identified the recipient not only by her relationship to the decedent—stepdaughter—but by her

[1] When married, Sara's last name was Tomczik.

[2] The quoted clause includes the word "husband" instead of wife. Mathew and Sara entered into reciprocal wills and, like the majority, I assume that the use of husband, rather than wife, was a typographical error.

name—Dawn M. Valentine. The *Kerr* appellant argued that the bequest's use of "stepdaughter" meant that Valentine could not take under the will because, when the decedent died, he was no longer married to Valentine's mother and Valentine was no longer the decedent's stepdaughter. *Id*. This court rejected that argument. We observed that

> [t]he will not only refers to a "stepdaughter," but it mentions the name of a specific individual. In the absence of a contrary intent, *the word "stepdaughter," when used in conjunction with an individual's name*, is a descriptive term which may not be distorted into a condition limiting the bequest.

Id. (emphasis added). Thus, critical to the holding in *Kerr* was that the stepdaughter's name—Dawn M. Valentine—was included in the bequest, not just the familial designation of stepdaughter. The bequest in the residual clause in this case—to "my wife's heirs-at-law"—contains no names or similar identifiers. To be parallel to *Kerr*, the bequest would have to state that it was to go to "my father-in-law and mother-in-law, Calvin and Patricia Headley." That is not the language of the will. Because the only element present here is the marriage-based classification, I conclude that *Kerr* is distinguishable.

As to the application of Minn. Stat. § 524.2-804 (2020) to this case, appellants Calvin and Patricia Headley ask us to engage in a double fiction. First, as all parties agree and as the statute dictates, the bequest to Sara is revoked based on the fiction that Sara "died immediately before the dissolution" of the marriage. Minn. Stat. § 524.2-804, subd. 2. Appellants, however, ask us to go one step further and apply Sara's fictional death a second time—not just to revoke a bequest but to use the fiction affirmatively to create a right for appellants to inherit under the will.

Appellants' argument is contrary to the actual language of the residual clause and is not logical. Here, the will provides that the heirs-at-law are to be determined "as of the date of death of the survivor of my [wife] and me." Sara, however, is not yet deceased. As such, Mathew's death only triggered the bequest to Sara and, as everyone agrees, that bequest is revoked by operation of Minn. Stat. § 524.2-804. As to Sara's heirs-at-law, the will dictates that they are to be determined only after the survivor, in this case Sara, dies. The residual clause is thus an inchoate provision as to Sara's heirs. Indeed, Sara's actual heirs-at-law remain unknown and cannot be determined until her death. If we were to apply Minn. Stat. § 524.2-804 as appellants seek, we would be using that statute not just to revoke bequests to a divorced spouse, but to *create* a bequest (or other right to inherit) on the part of the former spouse's *potential* heirs-at-law that they would otherwise have no right to receive. Indeed, if there had been no divorce, Sara would be the recipient under the will, not her heirs-at-law, because Sara has survived Mathew.

The illogic of appellants' argument becomes even more apparent if, for example, Sara had remarried. Under that scenario, if we were to apply appellants' interpretation, Sara's new husband would be a beneficiary of a portion of Mathew's residual estate. That result would undoubtedly be contrary to both the testamentary intent of the decedent and Minn. Stat. § 524.2-804.[3] *See* Minn. Stat. § 524.1–102(b)(2) (2020) (stating that one of

[3] The majority references the legislative history of Minn. Stat. § 524.2–804 in rebutting respondent's arguments, regarding the legislature's failure to adopt a provision of the uniform probate code revoking bequests to relatives of a divorced spouse. Legislative history, however, is only relevant when interpreting an ambiguous statute. *In re Welfare of Child. of J.B.*, 782 N.W.2d 535, 545 (Minn. 2010); *see also* Minn. Stat. § 645.16 (2020). Here, neither party argues and this court has not determined that Minn. Stat. § 524.2–804

the guiding purposes of Minnesota Statutes chapter 524 is "to discover and make effective the intent of a decedent in distribution of property").

Instead of adopting appellants' argument, I would follow the persuasive reasoning in the nonprecedential opinion of our court in *Danca.* That case involved the same type of residual clause—that, if the testator's spouse predeceases the testator, one-half of the residue of the estate is to go to the spouse's heirs-at-law. 1999 WL 232664, at *1. In *Danca*, we concluded that the residual clause, as is also the case here, involved "a devise to a class, the members of which were impossible to predict at the time of the will's execution and were defined solely by their relationship to the ex-[spouse]." *Id*. at *2.

We distinguished *Kerr* on the grounds that "[w]hile the testamentary intent with respect to the stepdaughter in *Kerr* was evidenced to some degree by the fact that she was identified by name, testamentary intent with respect to a class gift is less clear." *Id*. We thus concluded in *Danca* that, because the residual clause identified the recipients only by their relationship to the ex-husband, distributing half of the testator's residual estate to heirs of the divorced spouse—after the divorced spouse already received his share of the marital assets—"would be contrary to the intent demonstrated by the will and surrounding circumstances at the time of execution." *Id.* at *3.

The only potential distinction between the facts in *Danca* and the present case is that the will here expressly states that the references to "wife" and "spouse" in the will are

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is ambiguous. Moreover, I am "not persuaded legislative inaction reveals a legislative intent to benefit relatives of an ex-spouse where to do so is contrary to testator's intent." *In re Danca*, No. C1-98-1497, 1999 WL 232664, at *2 (Minn. App. Apr. 20, 1999).

to Sara Tomczik. I believe that to be insufficient to require a different result here. While the naming of Mathew's wife in the will clarifies the identity of his wife, it does not at all clarify the identity of his wife's heirs-at-law. They remain members of a class defined only by reference to a marriage that ended in divorce and that cannot be definitively identified until Sara's death. I would thus affirm the district court's grant of summary judgment for respondent.