

# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of September, 2022** are as follows:

**BY Crichton, J.:**

2021-CC-01521

SUCCESSION OF RAYMOND JOHN BRANDT (Parish of Jefferson)

AFFIRMED. SEE OPINION.

Hughes, J., dissents and assigns reasons.

Genovese, J., dissents for the reasons assigned by Hughes, J.

Griffin, J., dissents for the reasons assigned by Hughes, J.

**SUPREME COURT OF LOUISIANA**

**No. 2021-CC-01521**

**SUCCESSION OF RAYMOND JOHN BRANDT**

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of Jefferson

**CRICHTON, J.**

This matter arises out of a motion filed by Alexis Carroll Hartline and Zachary Shawn Hartline in which they seek an interim allowance for their maintenance during the administration of the succession of Raymond John Brandt (“Decedent”). It is undisputed that the Hartlines are Decedent’s forced heirs by adoption (hereinafter, the “Forced Heirs”) and that Decedent entered into a last will and testament placing their legitime in trust. It is further undisputed that Decedent designated the Forced Heirs as principal beneficiaries of the relevant trusts and designated his surviving spouse, Jessica Fussell Brandt (the “Surviving Spouse”), as income beneficiary, thus granting her the sole right to any and all net income generated by the estate property held in trust for the duration of her life.

We granted the Forced Heirs’ writ to review whether they are entitled to receive the requested allowance as an advance on amounts they are “eventually due,” pursuant to La. C.C.P. art. 3321.<sup>1</sup> For the reasons set forth herein, we find the Forced Heirs cannot receive an interim allowance during the administration of Decedent’s succession because they are not due, upon the termination of the administration, cash

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<sup>1</sup> La. C.C.P. art. 3321 provides, in pertinent part:

When a succession is sufficiently solvent, the surviving spouse, heirs, or legatees shall be entitled to a reasonable periodic allowance in money for their maintenance during the period of administration, if the court concludes that such an allowance is necessary, *provided the sums so advanced to the spouse, heirs, or legatees are within the amount eventually due them*. Such payments shall be charged to the share of the person receiving them.

(Emphasis added.)

and/or property from which cash may be made available. We thus affirm the decision of the court of appeal and remand the matter to the district court for further proceedings.

### **FACTS AND PROCEDURAL HISTORY**

Decedent died on November 14, 2019, and was survived by his wife, the Surviving Spouse, and her biological grandchildren, the Forced Heirs. Decedent did not have biological children of his own, but he and the Surviving Spouse adopted the Forced Heirs in October 2019, shortly before his death. The Forced Heirs were under the age of 24 (19 and 23) at the time of Decedent's death, and it is thus undisputed that they are Decedent's forced heirs by way of adoption.<sup>2</sup>

On November 26, 2019, the Surviving Spouse petitioned for probate of a last will and testament purportedly executed by Decedent as of October 24, 2019 (the "2019 Will"). The 2019 Will revoked all of Decedent's prior wills and codicils and left his entire estate to the Raymond John Brandt Revocable Trust (the "*Inter Vivos* Trust"), an *inter vivos* trust established pursuant to that certain trust instrument originally dated as of January 16, 2015 (as amended, the "*Inter Vivos* Trust Instrument"). The district court probated the 2019 Will and confirmed the Surviving Spouse's appointment as the independent executrix of the succession.

Significant litigation has ensued since the probate of the 2019 Will as to whether the 2019 Will and a prior purported last will and testament of Decedent, dated January 16, 2015 (the "2015 Will"), are both invalid and absolutely null for

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<sup>2</sup> La. C.C. art. 1493(A) provides:

Forced heirs are descendants of the first degree who, at the time of the death of the decedent, are twenty-three years of age or younger or descendants of the first degree of any age who, because of mental incapacity or physical infirmity, are permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent.

La. C.C. art. 199 provides, in pertinent part: "Upon adoption, the adopting parent becomes the parent of the child for all purposes and the filiation between the child and his legal parent is terminated, except as otherwise provided by law."

failure to comply with the formal requirements of a notarial testament set forth in La. C.C. art. 1577. If so, it remains unresolved whether a third purported last will and testament of Decedent, dated March 19, 2010 (the “2010 Will”), controls the disposition of Decedent’s estate. But that question is not before us, nor would its resolution affect our analysis herein. Relevant here, it remains undisputed that, under the terms of the trusts established under the 2010 Will and the terms of the *Inter Vivos* Trust Instrument (applicable to the 2019 Will or the 2015 Will),<sup>3</sup> neither of the Forced Heirs is named as an income beneficiary or otherwise provided a beneficiary right to income or principal of Decedent’s residual estate during the lifetime of the Surviving Spouse.

Under both the *Inter Vivos* Trust Instrument and the 2010 Will (together with the *Inter Vivos* Trust Instrument, the “Trust Instruments”), Decedent directs the trustee or executor to transfer his estate, less certain specific bequests,<sup>4</sup> to two trusts. With respect to the first trust, the trustee or executor is directed to transfer an amount in money or property equivalent to the largest amount of trust property that can pass free of federal estate taxes, without including any transfers qualifying for the marital deduction. Decedent’s residual estate is to be transferred to a “Q-TIP Trust,” with respect to which the trustee or executor is directed to elect that any estate property passing into the trust “be treated as qualified terminable interest property as defined in Section 2056(b)(7) of the Internal Revenue Code for purposes of qualifying for

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<sup>3</sup> The 2015 Will, like the 2019 Will, directed that all of Decedent’s property be distributed to the *Inter Vivos* Trust.

<sup>4</sup> The Trust Instruments list specific property that is to be transferred to individuals, including the Surviving Spouse and Forced Heirs, free of trust. According to records that were made under seal, the district court issued judgments of partial possession, placing the trustee of the *Inter Vivos* Trust in possession of certain of these assets at the request of the Surviving Spouse. The *Inter Vivos* Trust Instrument also directs the trustee to establish a third, charitable trust, of which neither the Surviving Spouse nor the Forced Heirs are beneficiaries. Relevant here, it is not asserted by the Surviving Spouse that the estate property distributed pursuant to these specific bequests are in values exceeding the Forced Heirs’ legitimes.

the marital deduction” under federal tax law<sup>5</sup> and that “no authorization, direction, power or other provision contained in [the Trust Instrument] be exercised in a manner that would prevent this Trust from so qualifying.”

For each of the foregoing trusts, Decedent, as settlor, directs the trustee to hold and administer the property of his estate for the benefit of the designated beneficiaries. The Surviving Spouse is designated the sole income beneficiary for life, such that she is to receive “all” of the net income from the estate property held in trust. The Forced Heirs are named as principal beneficiaries, each to receive 50% of the estate property held in trust if they live until the termination of the trusts, which is determined to occur upon the later of the Surviving Spouse’s death or when the younger of the Forced Heirs reaches 30 years of age.<sup>6</sup> Spendthrift provisions expressly prohibit the income and principal beneficiaries from voluntarily or involuntarily alienating their respective interests in the trusts.<sup>7</sup>

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<sup>5</sup> 26 U.S.C.A. §2056(b)(7) provides that “qualified terminable interest property” will be treated as passing to the surviving spouse for purposes of the marital deduction set forth in 26 U.S.C.A. §2056(b)(7) and defines such property, in pertinent part, as follows:

- (B) Qualified terminable interest property defined.--For purposes of this paragraph--
- (i) In general.--The term “qualified terminable interest property” means property--
    - (I) which passes from the decedent,
    - (II) *in which the surviving spouse has a qualifying income interest for life,*
    - and
    - (III) to which an election under this paragraph applies.
  - (ii) Qualifying income interest for life.--The surviving spouse has a qualifying income interest for life if--
    - (I) *the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property,* and
    - (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

(Emphasis added.)

<sup>6</sup> The only distribution to which the Forced Heirs are conditionally entitled prior to the termination of the trusts is a one-time \$500,000 distribution, which the Trust Instruments direct the trustee to make only if the Surviving Spouse’s death occurs before both Forced Heirs reach 30 years of age.

<sup>7</sup> La. R.S. 9:1725(7) defines a “spendthrift trust” as “a trust under which alienation by a beneficiary of an interest in income or principal is restricted to the full extent permitted by this Code.”

On March 19, 2021, the Forced Heirs filed a “Motion for Interim Allowance for Maintenance During Administration,” in which they argued they are entitled to a monthly allowance for their maintenance during the period of administration of Decedent’s estate, regardless of which of the purported testaments applies, pursuant to La. C.C.P. art. 3321. The parties disputed the reasonableness and necessity of the requested amount – \$15,000 per person per month. However, in lieu of addressing all issues related to the motion at once, the district court and parties agreed to a two-step procedure, whereby the court would first address the Surviving Spouse’s contentions that the Forced Heirs are not entitled to an allowance under La. C.C.P. art. 3321 as a matter of law. If determined the Forced Heirs are not precluded from receiving an allowance, a subsequent evidentiary hearing would be held to determine whether such an interim allowance is necessary and, if so, a reasonable amount. Accordingly, in the proceedings below the district court reviewed only whether *any* allowance could be granted to the Forced Heirs.

Following a hearing on May 4, 2021, the district court granted the Forced Heirs’ motion, finding they are entitled to a “reasonable” periodic allowance in money for their maintenance during the period of administration of Decedent’s estate. Due to the bifurcation of the issues described above, the court did not determine what amount would be reasonable or necessary.

The Surviving Spouse appealed, arguing the Forced Heirs are not entitled to any income until her death, including an interim allowance during the period of administration, under either the 2010 Will or the 2019 Will.<sup>8</sup> The court of appeal granted her writ application and held the Forced Heirs are not entitled to an interim allowance for their maintenance, concluding as follows:

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<sup>8</sup> It appears that no party asserts applicability of the 2015 Will because its attestation clause suffers from the same alleged defects as the 2019 Will. Accordingly, the parties assume that either the 2010 Will or the 2019 Will applies to the disposition of Decedent’s estate. Because the 2015 Will and 2019 Will both direct transfer of Decedent’s entire estate to the *Inter Vivos* Trust, these wills are indistinguishable for purposes of the analysis herein. *See* Note 3, *supra*.

It is undisputed that under the terms of whichever testament and/or trust is controlling herein and as permitted by the Trust Code, Mrs. Brandt, the surviving spouse, is the sole income beneficiary of Mr. Brandt's estate for life. As such, *following the period of administration*, the Hartlines are not entitled to any income from Mr. Brandt's estate. Thus, under the current facts and circumstances presented, we find that the Hartlines are not entitled to "a reasonable periodic allowance in money for their maintenance during the period of administration" of Mr. Brandt's estate pursuant to La. C.C.P. art. 3321. Therefore, we find the trial court erred in granting the Hartlines' "Motion for Interim Allowance for Maintenance During Administration."

*Succession of Brandt*, 2021-310, p. 7 (La. App. 5 Cir. 9/22/21), 2021 WL 4304750 at \*4 (emphasis in original). Accordingly, the court of appeal reversed the district court ruling and remanded to the district court for further proceedings. *Id.*

We granted the Forced Heirs' writ application. *Succession of Brandt*, 2021-01521 (La. 1/19/22), 330 So. 3d 1074.

## DISCUSSION

The primary issue before the Court is whether the Forced Heirs are entitled to an interim allowance during the pendency of the administration of Decedent's succession under La. C.C.P. art. 3321. Because we interpret La. C.C.P. art. 3321 to permit an advance where a legatee is due, upon the termination of the succession, cash and/or property from which cash may be made available, we first address whether Decedent's wills, whichever applicable, bequeath such rights to the Forced Heirs. For the reasons set forth herein, we find the Forced Heirs are not entitled to an interim allowance under La. C.C.P. art. 3321 per any of Decedent's wills because the Trust Instruments, which govern the estate property post-succession, designate the Surviving Spouse as the "sole" income beneficiary and expressly prohibit distribution of income to any other person, including the Forced Heirs, until the termination of the trusts.

We next determine whether the Louisiana Trust Code, La. R.S. 9:1721, *et seq.* (the "Trust Code"), nonetheless mandates such an allowance for the Forced Heirs' health, education, maintenance, and support ("HEMS") because their legitime is

placed in trust. *See* La. R.S. 9:1841.<sup>9</sup> For the reasons that follow, we find that HEMS payments are not mandated by the Trust Code where, as here, a testator burdens the legitime with an income interest or usufruct in favor of his surviving spouse, as permitted by La. R.S. 9:1841(2) and La. R.S. 9:1844.<sup>10</sup> We thus uphold the directive in Decedent’s will that his surviving spouse, alone, receive all net income from the estate property held in the applicable trusts until her death. Accordingly, we affirm.

This matter presents questions of law for which *de novo* review is required, as the relevant facts are undisputed. *See, e.g., Smith v. Robinson*, 2018-0728, p. 5 (La. 12/5/18), 265 So. 3d 740, 744 (“Questions of law are reviewed *de novo*, without any deference to the legal conclusions reached by the district court, as this court is the ultimate arbiter of the meaning of laws of this state.”). Specifically, the parties acknowledge that the Forced Heirs will have no interest in the income of any trust to which Decedent directs distribution of his estate, regardless of which of the purported testaments applies. In addition to naming the Forced Heirs as the principal beneficiaries, the Trust Instruments expressly direct that “all” net income from the estate property held in the trust is to be distributed to the Surviving Spouse for the remainder of her life. Moreover, with respect to the Q-TIP trusts, the testator-settlor

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<sup>9</sup> La. R.S. 9:1841 provides:

*The legitime or any portion thereof may be placed in trust provided:*

(1) *The trustee* after taking into account all of the other income and support to be received by the forced heir during the year *shall distribute to the forced heir, or to the legal guardian of the forced heir, funds from the net income in trust sufficient for the health, maintenance, support, and education of the forced heir.*

(2) The forced heir’s interest is *subject to no charges or conditions except as provided in* R.S. 9:1843, **1844**, 1891 through 1906 and Subpart B of Part III of this Chapter.

(3) Except as permitted by R.S. 9:1844, the term of the trust, as it affects the legitime, does not exceed the life of the forced heir; and

(4) The principal shall be delivered to the forced heir or his heirs, legatees, or assignees free of trust, upon the termination of the portion of the trust that affects the legitime.

(Emphasis added.)

<sup>10</sup> La. R.S. 9:1844 provides: “The legitime in trust may be burdened *with an income interest or with a usufruct in favor of a surviving spouse* to the same extent and for the same term that a usufruct of the same property could be stipulated in favor of the same person for a like period.” (Emphasis added.)



expressly directs that “no authorization, direction, power or other provision” contained in the Trust Instruments be executed in a manner that would prevent Decedent’s residual estate held in the Q-TIP trusts from qualifying as a “qualified terminable interest property” for federal estate tax purposes. Among the requirements for so qualifying, which pertains to whether the transfers from the estate to the trust may benefit from the marital deduction under the Internal Revenue Code, is the condition that “the surviving spouse is entitled to *all* the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property.” 26 U.S.C.A. §2056(b)(7)(B)(i) (emphasis added). In sum, Decedent not only directed that the Forced Heirs would have no interest in the estate property during the terms of all the relevant trusts but also expressly prohibited *any* construction of the terms of the Q-TIP trusts that would permit distribution of income from the estate property to any person other than the Surviving Spouse during her lifetime.

Because of the parties’ agreement that the factual issues of the Forced Heirs’ request would be decided later, our review is limited to whether the Forced Heirs’ principal interests in Decedent’s estate is the type of interest that entitles them to an interim allowance. While both parties evidently assume that an interim allowance under La. C.C.P. art. 3321 is an advance on what the Forced Heirs will be due upon the termination of the succession, the dissent nonetheless reasons that an interim allowance should be granted because the Forced Heirs will receive the estate property upon the termination *of the trust* or if none of the wills is upheld.<sup>11</sup> We thus begin our analysis with Article 3321’s plain language, which provides in pertinent part:

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<sup>11</sup> In regards to the dissent’s argument that none of the wills may be found applicable, it is noteworthy that the 2019 Will has been probated and that we do not review here a ruling on an exception of prematurity or no right of action with respect to the Forced Heirs’ motion, as no party asserts the dissent’s position.

When a succession is sufficiently solvent, the surviving spouse, heirs, or legatees shall be entitled to a reasonable periodic allowance in money for their maintenance during the period of administration, if the court concludes that such an allowance is necessary, *provided the sums so advanced to the spouse, heirs, or legatees are within the amount eventually due them*. Such payments shall be charged to the share of the person receiving them. . . .

(Emphasis added). As the interim allowance must be within “the amount eventually due” the Forced Heirs, the pertinent question, then, is whether the principal interests to the property of Decedents’ estate held in trust is an amount with respect to which an advance may be made under La. C.C.P. art. 3321.

Article 3321 expressly codifies a jurisprudential rule, rendering the case law upon which it is based particularly helpful in construing its meaning. La. C.C.P. art. 3321, cmt (a) (expressing intent to codify the principles jurisprudentially adopted by this Court in *Succession of Broadaway*, 3 La. Ann. 591 (1848); *Succession of Ledet*, 175 La. 225, 143 So. 56 (1932), and *Succession of Wengert*, 180 La. 483, 156 So. 473 (1934)). In *Succession of Broadaway*, the administrator sold a portion of the succession property for the purpose of paying debts of the succession and to support the decedent’s widow and minor heirs. 3 La. Ann. 591. Reviewing whether the administrator’s subsequent distributions to the widow and heirs were properly made, this Court announced that a widow and her heirs can receive an interim allowance pending the administration of the decedent’s estate, where it is established that the succession is solvent, the succession is pending administration, and the advances are necessary. *Id.* at 592. However, the Court stipulated that “*on a partition*, those parties will be considered as having received those amounts *as advances on account of their shares*, and the administrator will be entitled to a credit for all such payments.” *Id.* (emphasis added).

In *Succession of Ledet*, the executors appealed a judgment ordering them to pay an allowance to the decedent’s widow and her two minor children. 143 So. 56. The children, as forced heirs, were entitled to one half of the estate, and the widow,

who was determined to be in necessitous circumstances, was entitled to one quarter of the estate. *Id.* at 56-57. Citing *Broadaway*, the Court held that an executor or administrator of a succession can be compelled “to advance to an heir in necessitous circumstances, during the administration of the estate, a monthly allowance for his or her support, even though the allowance be safely within the amount eventually coming to the heir.” *Id.* at 57. The Court again noted that the estate was solvent. *Id.* In response to the executors’ claims that no funds were available for the payment, the Court stated, “we have no doubt that the funds can be made available for such a small payment.” *Id.* Implicit in this statement is that estate property held in succession could be alienated or otherwise be made to produce cash in order to fund the interim allowance due.

Finally, in *Succession of Wengert*, the Court affirmed a judgment ordering the executor to pay to the widow \$120.00 in monthly installments of \$40.00. 156 So. 473, 492. The widow was a legatee of real estate valued at \$3,000.00, and cash in the amount of \$770.00. *Id.* at 485. Finding that the estate was solvent, the Court reasoned that the succession administrator could be compelled to advance sums to a widow in necessitous circumstances for her maintenance during the administration of the estate. *Id.* at 492.

The facts of *Broadaway*, *Ledet*, and *Wengert* are inapposite to the present case because these cases did not address whether an advance requested was within the “amounts eventually due” to legatees who are bequeathed limited rights to estate property.<sup>12</sup> We are guided nonetheless by their principles. In each of these cases, the

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<sup>12</sup> The laws of forced heirship did not allow a usufruct to impinge upon the legitime at the time an interim allowance was sought on behalf of the forced heirs in *Broadaway* and *Ledet*. A. N. Yiannopoulos, *Of Legal Usufruct, the Surviving Spouse, and Article 890 of the Louisiana Civil Code: Heyday for Estate Planning*, 49 La. L. Rev. 803, 825 (1989) (summarizing history of forced heirship, including legislative amendments permitting a surviving spouse usufruct to impinge upon the legitime, and noting “[i]n contrast to the prior law, there is no impingement on the legitime of descendants when a spouse grants to the surviving spouse a usufruct over his entire estate.”). The Trust Code, which was first promulgated in 1968, did not exist. If the allowance requested

Court considered the allowance requested in relation to the amounts that would be received at the judgment of possession and assuming the facts applicable at the time the motion for interim allowance was considered. *See, e.g., Broadaway*, 3 La. Ann. at 592 (tying the necessary advance to the amount that would be received by the surviving spouse and heirs after the termination of the administration by stating “***on a partition***, those parties will be considered as having received those amounts as advances on account of their shares.”) (emphasis added).

Reviewing these cases and the language of La. C.C.P. art. 3321 together, we discern that the apparent purpose of La. C.C.P. art. 3321, which is titled “Interim allowance for maintenance during administration,” is to alleviate the burden a succession administration may have on individuals who are owed something after the period of administration and require an advance on the amounts they are owed. *See also* 1A Frank L. Maraist, *La. Civ. L. Treatise, Civ. Proc.*, § 5.18. (“Much of the difficulty caused by the inclusion of the surviving spouse’s share of the community into the succession of the deceased spouse is alleviated by special statutes. . . . While the succession is under administration, the surviving spouse, heirs and legatees may be ***entitled to advances upon the sums eventually due them from the succession***. [La. C.C.P. art. 3321.]”) (emphasis added). If the estate property does not include cash that can be distributed, but there is property to which the party requesting an interim allowance is entitled that may produce cash – by alienation or otherwise – the Court may order that cash be made available. *See Ledet, supra*. *See also* La. C.C.P. art. 3261 (“A succession representative may sell succession property in order to pay debts and legacies, ***or for any other purpose***, when authorized by the court as provided in this Chapter.”) (emphasis added). In sum, the quintessential question these cases ask is whether the person requesting an interim allowance will be

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exceeded the amounts due in full ownership in these cases, the Court made no distinguished analysis thereof.

“eventually due,” upon the termination of the succession administration, cash and/or property from which cash may be made available in value exceeding the advance requested. If so, and if the remaining requirements of La. C.C.P. art. 3321 are met,<sup>13</sup> the requesting surviving spouse, heir, or legatee is entitled to an advance on their rights.

In applying these principles to the facts at hand, we look to the Trust Code and to the terms of the relevant trusts to which Decedent’s estate may be distributed. The Trust Code defines a trust as “the relationship resulting from the transfer of title to property to a person to be administered by him as a fiduciary for the benefit of another.” La. R.S. 9:1731. The terms of a trust are created by a settlor in accordance with a trust instrument meeting the requirements of the Trust Code. La. R.S. 9:1761. The person receiving title and administering the trust as a fiduciary is the trustee. La. R.S. 9:1781. A “[p]rincipal beneficiary” to the trust property is “a beneficiary presently, conditionally, or ultimately entitled to principal” in the trust. La. R.S. 9:1725(4). An “[i]ncome beneficiary,” by contrast, is “a beneficiary to whom income is payable, presently, conditionally, or in the future, or for whom it is accumulated, or who is entitled to the beneficial use of principal presently, conditionally, or in the future, for a time before its distribution.” La. R.S. 9:1725(2). Income that is unallocated to an income beneficiary may ultimately become principal. *See* La. R.S. 9:1961. Finally, if the Code is silent, “resort shall be had to the Civil Code or other laws, but neither the Civil Code nor any other law shall be invoked to defeat a disposition sanctioned expressly or impliedly by [the Trust Code].” La. R.S. 9:1724

The significant – and perhaps obvious – difference between a principal and income beneficiary is that only the income beneficiary is entitled to income of the

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<sup>13</sup> Such factors, not relevant to the present dispute, include necessity and reasonableness of the allowance, solvency of the estate, and procedures the requesting party must follow. La. C.C.P. art. 3321.

property held in trust. In each of the Trust Instruments, Decedent names the Surviving Spouse as the sole income beneficiary of the relevant estate property and not only expressly directs the trustee to distribute net income to her, alone, but also further prohibits distribution of income from the trust property to any other person. The Trust Instruments thus consistently provide that the Forced Heirs will receive no property of the estate held in the relevant trusts – nor income therefrom – upon the termination of the succession administration. In fact, not only do the Forced Heirs have no right to receive or use the property of Decedent’s estate held in trust upon the termination of the succession administration, but they personally may *never* be due funds or property from the estate held in these trusts (*i.e.*, if they predecease the Surviving Spouse). *See* La. R.S. 9:1841(3) (the term of the trust may survive the life of the forced heir where the surviving spouse is the income beneficiary); *see also* La. R.S. 9:1841(4) (“The principal shall be delivered to the forced heir ***or his heirs, legatees, or assignees*** free of trust, upon the termination of the portion of the trust that affects the legitime.”) (emphasis added).

It is thus clear that, irrespective of which of Decedent’s wills is ultimately found applicable, the Forced Heirs are not “eventually due,” upon the termination of the succession administration, cash held by the estate and/or estate property from which cash may be made available for the Forced Heirs’ benefit. Since the purpose of La. C.C.P. art. 3321 is to provide an advance on amounts due upon the termination of the administration of a succession, we find the Forced Heirs are not entitled to an interim allowance relative to their rights under the Trust Instruments.

In so holding we note that if we adopted the dissent’s interpretation of La. C.C.P. art. 3321 that would entitle the Forced Heirs to an allowance because of the rights to estate property they will obtain upon the termination *of the trust*, such interpretation would arbitrarily entitle the Forced Heirs to receive funds during administration of the succession to which they would otherwise not be entitled to

receive upon the termination of the succession administration. The apparent purpose of the interim allowance provided by La. C.C.P. art. 3321 – *i.e.*, to permit an advance during the administration of the estate, as required, on amounts a surviving spouse, heir, or legatee will receive thereafter – would not be met by such incongruous rights.<sup>14</sup> We therefore decline to find that the terms “eventually due” include the Forced Heirs’ principal interests in the trusts even though they may ultimately obtain full ownership of the property of Decedent’s estate upon termination of the trusts.

We note that, for similar reasons, a narrow interpretation of “amount eventually due” limiting interim allowances to situations where an heir, legatee, or surviving spouse will receive full ownership of estate property upon the termination of the succession would unreasonably restrain the purpose of La. C.C.P. art. 3321. Although we hold that Decedent’s dispositions granting the Forced Heirs’ principal interests in the trusts do not entitle the Forced Heirs to receive an interim allowance under La. C.C.P. art. 3321, we need not and do not conclude a party whose interest in an estate is burdened by a trust (*e.g.*, a surviving spouse usufructuary or surviving spouse income beneficiary) is prohibited from receiving an interim allowance *if* they are due, upon the termination of the succession administration, cash and/or to property from which cash may be made available.

It is relevant, then, whether the Trust Code requires a trustee to distribute HEMS payments from net income of the trust to a forced heir principal beneficiary whose legitime is placed in trust, as argued by the Forced Heirs. The Forced Heirs appear to acknowledge that their rights under the Trust Instruments do not entitle

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<sup>14</sup> This contradiction would similarly arise in a number of situations, including, *inter alia*, (1) where the settlor has created a testamentary trust with different persons named as income and principal beneficiaries outside of forced heirship, (2) any succession involving a surviving spouse usufructuary, and (3) where a testator-settlor has limited the legatee’s right to income in the trust. This incongruity would further generate conflict related to the duration of the administration; if the Forced Heirs were granted an interim allowance in this case, for example, a longer administration would create a financial benefit and windfall to the Forced Heirs by allowing them access to funds they would not receive otherwise.

them to an interim allowance under La. C.C.P. art. 3321. They argue instead only that the Trust Code “constrains” Decedent testator’s ability to direct that all net income from the trusts be allocated to the Surviving Spouse and not the Forced Heirs. Specifically, they rely on the Trust Code requirement that a trustee “shall” distribute sufficient HEMS payments to them, as forced heirs, under the code’s rules relative to placing a legitime in trust. *See* La. R.S. 9:1841(1). The argument follows that if the Trust Code mandates that the Forced Heirs receive HEMS payments upon the termination of the succession administration, they may also receive an allowance within such amounts during the succession administration.

In determining whether La. R.S. 9:1841(1) requires derogating from the dispositions in the Trust Instruments, we are mindful of certain applicable rules of statutory construction. First, when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written. La. C.C. art. 9. Further, the legislature is presumed to act with deliberation and to enact each statute or article in light of the preceding law involving the same subject matter. La. R.S. 24:177(C). “Under our long-standing rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter.” *Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc.*, 2006-0582, p. 10 (La. 11/29/06), 943 So. 2d 1037, 1045, quoting *Louisiana Mun. Ass’n v. State*, 2004-0227 (La. 1/19/05), 893 So. 2d 809, 837. And with respect to provisions of the Trust Code, in particular, courts are instructed to apply a liberal construction of the code in favor of freedom of the settlor’s disposition. La. R.S. 9:1724 (“The provisions of this Code **shall** be accorded a liberal construction in favor of freedom of disposition.”) (emphasis added).

Relevant here, Louisiana Revised Statute 9:1841 sets forth the general requirements of placing a legitime in trust and provides:



The legitime or any portion thereof may be placed in trust provided:

(1) *The trustee* after taking into account all of the other income and support to be received by the forced heir during the year ***shall distribute to the forced heir, or to the legal guardian of the forced heir, funds from the net income in trust sufficient for the health, maintenance, support, and education of the forced heir.***

(2) The forced heir's interest is ***subject to no charges or conditions except as provided in*** R.S. 9:1843, ***1844***, 1891 through 1906 and Subpart B of Part III of this Chapter.

(3) Except as permitted by R.S. 9:1844, the term of the trust, as it affects the legitime, does not exceed the life of the forced heir; and

(4) The principal shall be delivered to the forced heir or his heirs, legatees, or assignees free of trust, upon the termination of the portion of the trust that affects the legitime.

(Emphasis added.) Referenced in La. R.S. 9:1841(2) as a permissible charge or condition on the forced heirs' interest, La. R.S. 9:1844 provides:

The legitime in trust may be burdened ***with an income interest or with a usufruct*** in favor of a surviving spouse ***to the same extent*** and ***for the same term*** that a usufruct ***of the same property*** could be stipulated ***in favor of the same person*** for a like period.

(Emphasis added.) Thus incorporated by La. R.S. 9:1844, Louisiana Civil Code article 1499 provides:

The decedent may grant a usufruct to the surviving spouse over all or part of his property, including the forced portion, and may grant the usufructuary the power to dispose of nonconsumables as provided in the law of usufruct. The usufruct shall be for life unless expressly designated for a shorter period, and shall not require security except as expressly declared by the decedent or as permitted when the legitime is affected.

A usufruct over the legitime in favor of the surviving spouse is a permissible burden that does not impinge upon the legitime, whether it affects community property or separate property, whether it is for life or a shorter period, whether or not the forced heir is a descendant of the surviving spouse, and whether or not the usufructuary has the power to dispose of nonconsumables.

*See also* La. C.C. art. 1496 (“No charges, conditions, or burdens may be imposed on the legitime except those expressly authorized by law, such as a usufruct in favor of a surviving spouse or the placing of the legitime in trust.”).

In sum, Section 1841 of the Trust Code permits a legitime to be placed in trust if four requirements are met, including the requirement set forth in La. R.S. 9:1841(1) that the trustee distribute sufficient HEMS payments to a forced heir from the net income of the trust. Subsection (2) of 1841 then provides that the legitime in trust cannot be subject to any charges or conditions *except* as provided in La. R.S. 9:1844. In turn, La. R.S. 9:1844 not only specifically recognizes that the disposition of an income interest in trust to a surviving spouse as a permissible burden on a legitime but also expressly permits such designation to burden the legitime “to the same extent” that a testator may burden a legitime with a usufruct in favor of his surviving spouse. Significantly, no provision of law requires distribution of HEMS payments to a forced heir where a surviving spouse is granted a usufruct over the legitime; instead, the surviving spouse usufruct burdens the legitime by providing *no income* or other right to benefit therefrom to a forced heir naked owner. *See* Edward F. Martin, *Louisiana’s Law of Trusts 25 Years After Adoption of the Trust Code*, 50 LA. L. REV. 501, 521 (1990) (“If the surviving spouse has a usufruct or income interest over the forced portion, the spouse rather than the forced heir is entitled to income for the duration of the spouse’s interest.”).

The parties dispute the extent to which subsections (1) and (2) of La. R.S. 9:1841 may be harmonized. More specifically, the right of a trustee to make his or her surviving spouse the income beneficiary and burden the legitime by providing no income to the forced heir, *see* La. R.S. 9:1841(2) and La. R.S. 9:1844, must be reconciled with the proviso that a trustee shall distribute net income to the forced heirs for sufficient HEMS payments, *see* La. R.S. 9:1841(1). Reading these provisions *in pari materia*, we conclude that the requirement that a trustee make HEMS payments set forth in La. R.S. 9:1841(1) does not apply where, as here, the decedent has burdened the legitime in trust with a surviving spouse income interest pursuant to La. R.S. 9:1841(2) and La. R.S. 9:1844. *See Read v. U.S. ex rel. Dep’t*

*of Treasury*, 169 F.3d 243, 252-53, n. 11 (5th Cir. 1999) (referencing a trust instrument that provided distribution of income to the surviving spouse, alone, during her lifetime as being in accordance with La. R.S. 9:1841).

Our finding that the Forced Heirs are not entitled to HEMS payments under La. R.S. 9:1841(1) is grounded in the principles of statutory analysis referenced above. Permitting a surviving spouse to burden the legitime in trust “to the same extent” as a usufruct may burden the legitime does not lead to absurd consequences. La. C.C. art. 9. In fact, any contrary interpretation would lead to incongruous results by granting a forced heir greater rights to income when a testator leaves the legitime in trust with an income interest to the surviving spouse, as compared to when a testator leaves the legitime to the forced heir in naked ownership subject to a usufruct to the surviving spouse. Such disparate treatment would run afoul of La. R.S. 9:1844’s clear directive to treat the surviving spouse income interest and a surviving spouse usufruct the “same” and would encourage testators to bequeath their property free from trust and by the laws of usufruct and naked ownership in spite of the Trust Code’s express directive that it be construed liberally in favor of a testator’s disposition. La. R.S. 9:1724. Nor does our reading deprive La. R.S. 9:1841(1) and the protections granted therein of meaning. In cases where a testator is not survived by his or her spouse and/or does not designate the surviving spouse as income beneficiary or usufructuary, La. R.S. 9:1841(1) forces a trustee to distribute net income to a forced heir who *is* the income beneficiary sufficient for the forced heirs’ HEMS. In sum, our interpretation of the Trust Code properly gives meaning to the text of each of these articles and favors freedom of Decedent’s dispositions.

Even assuming, *arguendo*, that the Trust Code is ambiguous, our interpretation is further supported by the historical developments in this area of the law. Since its inception in 1844 to modern day, the surviving spouse usufruct has expanded to account for the desire of testators to protect their spouses financially

throughout the life of the survivor. In many ways, a modern-day testator may choose to elevate the rights of his or her surviving spouse over the rights of his or her forced heir. *E.g.*, 1976 La. Acts No. 227 (permitting testator to grant surviving spouse usufruct over family home); 1981 La. Acts. No. 911 (permitting usufruct to extend over property inherited by all of decedent's children, even if not children of the surviving spouse); 1996 La. Acts No. 77 (redefining forced heirs to only include young and disabled children and permitting usufruct over the entire forced portion, both community and separate property, and permitting surviving spouse usufruct the power to dispose of nonconsumables without the consent of forced heirs). This movement in favor of freedom of testator disposition has been repeatedly noted by scholars and other authorities in the law of successions. *See* A. N. Yiannopoulos, *Of Legal Usufruct, the Surviving Spouse, and Article 890 of the Louisiana Civil Code: Heyday for Estate Planning*, 49 LA. L. REV. 803, 804 (1989) (noting the multiple changes to the laws governing usufructs and forced heirship and observing that “[b]y the mid-seventies . . . a movement against the institution of forced heirship gained strength.”), *citing* Max Nathan, Jr., *Forced Heirship in Louisiana—An Assault on the Citadel: A Rejection of Forced Heirship*, 52 TUL. L. REV. 5 (1977) (“The thrust of my “assault on the citadel is dual. The two major objections to forced heirship are (1) that it is unsound in theory and (2) that it is unsound in practice.”); Kathryn Venturatos Lorio, *The Changing Concept of Family and Its Effect on Louisiana Succession Law*, 63 LA. L. REV. 1161, 1178 (2003) (providing a historical review of the changes in Louisiana law on forced heirship and rights of the surviving spouse usufruct and opining: “The law in Louisiana seemed to become, not necessarily what was best for society as a whole, but what was desired by each individual testator. . . . It is not surprising that spouses, while happily married and with a tax structure encouraging it as well, expressed a desire to leave their entire estates to their surviving spouses, even when children also survived the decedent.”). Consistent

with these observations, we find the Trust Code permits Decedent to elevate the rights of the Surviving Spouse over the rights of the Forced Heirs with respect to their legitime, just as he may have done were he to have disposed of his estate free of trust.

In sum, because a forced heir whose legitime is burdened by a usufruct in favor of the decedent's surviving spouse is a permissible burden and does not require HEMS payments be made to the forced heir, Decedent's disposition of his estate in trust and granting of an income interest to his surviving spouse, alone, is likewise a permissible burden on the Forced Heirs' legitime pursuant to La. R.S. 9:1841(2) and La. R.S. 9:1844. We reject an interpretation of La. R.S. 9:1841(1) that would require an exception to this permissible burden on a forced heir's legitime placed in trust. In so finding, we construe the Trust Code's clear and express directive – that the surviving spouse income interest may burden the legitime “to the same extent” as a surviving spouse usufruct – liberally in favor of freedom of Decedent's will, as instructed by the Legislature. La. R.S. 9:1724.

### **CONCLUSION**

Decedent left the Forced Heirs more than the law requires, bequeathing to them equal shares of the estate held in the applicable trusts rather than the one-half required by law.<sup>15</sup> At the same time, he apparently intended to protect his surviving spouse by leaving her the income interest to the applicable trusts for her natural life. Pursuant to whichever of Decedent's wills is determined to apply, the Forced Heirs are owed nothing and will receive nothing until the Surviving Spouse's death, as permitted by La. R.S. 9:1841(2) and La. R.S. 9:1844. Where the Forced Heirs are not entitled to any distribution from the applicable trusts when the administration of

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<sup>15</sup> Again, the Forced Heirs are additionally entitled to receive property pursuant to Decedent's specific bequests and pursuant to the partial judgments of possession previously entered into by the district court. *See* Note 4, *supra*.

Decedent's succession ends, they are not entitled to an advance during the administration of the succession on their interest in the estate by way of an interim allowance under La. C.C.P. art. 3321.

For the reasons set forth herein, we find the Forced Heirs cannot receive an interim allowance during the administration of Decedent's succession because they are not due, upon the termination of the administration, cash and/or property from which cash may be made available. We thus affirm the decision of the court of appeal and remand the matter to the district court for further proceedings.

**AFFIRMED.**

SUPREME COURT OF LOUISIANA

No. 2021-CC-01521

SUCCESSION OF RAYMOND JOHN BRANDT

On Writ of Certiorari to the Court of Appeal,  
Fifth Circuit, Parish of Jefferson

HUGHES, J., dissenting.

I respectfully dissent from the ruling of the majority, holding that when forced heirs “are not entitled to any distribution from the applicable trusts when the administration of Decedent’s succession ends, they are not entitled to an advance during the administration of the succession on their interest in the estate by way of an interim allowance under La. C.C.P. art. 3321.” (Slip op. at p. 21.)

The majority analysis is based on its conclusion that “the Forced Heirs are not entitled to an interim allowance under La. C.C.P. art. 3321 *per any of Decedent’s wills* because the Trust Instruments, which govern the estate property post-succession, designate the Surviving Spouse as the ‘sole’ income beneficiary and expressly prohibit distribution of income to any other person, including the Forced Heirs, until the termination of the trusts.” (Slip op. at p. 6 (emphasis added).)<sup>1</sup>

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<sup>1</sup> The majority places emphasis on the fact that the “Trust Instruments” name the surviving spouse as the sole *income* beneficiary of the assets that the decedent’s will(s) directs are to be placed in the trust (though also noting that the forced heirs as the named *principal* beneficiaries “may ultimately obtain full ownership of the property of Decedent’s estate upon termination of the trusts” (Slip op. at p. 14)) and instruct the trustee to distribute trust income only to the surviving spouse/income beneficiary, prohibiting distribution of trust income to any other person. Thus, the majority concludes that “the Forced Heirs will receive no property of the estate held in the relevant trusts – nor income therefrom – upon the termination of the succession administration.” (Slip op. at p. 13.) The majority continues, stating that “the Forced Heirs have no right to receive or use the property of Decedent’s estate held in trust upon the termination of the succession administration, but they personally may *never* be due funds or property from the estate held in these trusts (i.e., if they predecease the Surviving Spouse).” (Slip op. at p. 13.) Both of these conclusions are inaccurate. The forced heirs *will eventually* receive property upon termination of the succession administration, but only when the testamentary trust or a legal usufruct in favor of the surviving spouse (depending on whether and/or which of the decedent’s wills is found valid) terminates. And, the probability that one or both of the forced heirs will live beyond the decedent’s surviving spouse is more likely than not since she is their natural grandmother (and adoptive mother); notwithstanding, it is the fact that the forced heirs are *entitled to the ownership* of the decedent’s estate, eventually, that is determinative of their interest, not whether they may or may not live long enough to possess it.

However, the validity of the three wills executed by the decedent has not yet been finally determined by the district court; if none of the wills are found to be valid, the decedent's estate would not be subject to the trust created by the testamentary provisions, eliminating the majority rationale for the inapplicability of La. C.C.P. art. 3321.<sup>2</sup> Therefore, the applicability of Article 3321 (which is the authority the forced heirs cite for their "Motion for Interim Allowance for Maintenance During Administration" filed in the district court), alone, should govern our decision in this matter.

Article 3321 provides, in pertinent part:

When a succession is sufficiently solvent, the surviving spouse, *heirs*, or legatees *shall be entitled to a reasonable periodic allowance* in money for their maintenance during the period of administration, if

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<sup>2</sup> It should be noted that the majority states that "both parties evidently assume that an interim allowance under La. C.C.P. art. 3321 is an advance on what the Forced Heirs will be due upon the termination of the succession" (slip op. at p. 9); however, no statement by the parties appears to support such a supposition as to the forced heirs. Rather, in their "Motion for Interim Allowance for Maintenance During Administration," the forced heirs asked the district court for an order directing the succession representative to provide them with "a reasonable periodic allowance in money for their maintenance during the period of administration" and alleged that the succession is "sufficiently solvent," quoting La. C.C.P. art. 3321. In addition, the forced heirs alleged that prior to his death the decedent had provided them with support, and his surviving spouse had initially continued providing each of them with a monthly allowance and living expenses (including such expenses as property taxes and insurance; home furnishings, maintenance, and upkeep; tuition and fees for education; health insurance premiums; automobile expenses; grocery and food expenses; and other recreational activities and social expenses). Maintenance had also been provided to them in the form of "jointly-held credit card accounts" and employment with "Brandt businesses." However, the forced heirs further alleged that the decedent's surviving spouse had recently sought to evict them from the family home and "to otherwise cut off [their] maintenance." The forced heirs concluded the motion by requesting a ruling that "reasonable periodic allowance is necessary under the present circumstances and would be within the amount eventually due to [them] ... pursuant to Article 3321 ... for an interim allowance for maintenance during administration." As noticed by the appellate court, the forced heirs now appear to argue that La. R.S. 9:1841 "mandates that they are entitled to income for maintenance, no matter what" (**Succession of Brandt**, 21-310 (La. App. 5 Cir. 9/22/21), \_\_\_ So.3d \_\_\_ (2021 WL 4304750)); however, the assertion of that legal argument (though premature since post-administration maintenance has not yet been sought) does not provide a foundation for the majority statement that it is evident that the forced heirs have assumed an Article 3321 allowance "is an advance on what the Forced Heirs will be due upon the termination of the succession." Even if that is the case, as noted hereinafter the funds due the forced heirs are due "upon the termination of the succession" - though the forced heirs are not entitled to their forced portion *immediately* after termination of the succession administration - they will receive their forced portion upon termination of a legal usufruct to their adoptive mother (the decedent's surviving spouse) or upon termination of a trust established by one of decedent's wills; which of these alternatives apply has not been finally decided by the district court. It is the position of this dissent that the application of La. C.C.P. art. 3321 does not depend upon such a ruling, as Article 3321 is an *interim* remedy available only during administration of the succession and an award thereunder could not be continued after the succession administration ends.



the court concludes that such an allowance is necessary, *provided* the sums so *advanced* to the spouse, heirs, or legatees *are within the amount eventually due them*. Such payments shall be charged to the share of the person receiving them.

\* \* \*

(Emphasis added.)

It is well-settled that Louisiana courts are “constrained to follow the unambiguous words” of a codal or statutory provision. **Willis-Knighton Medical Center v. Caddo Shreveport Sales & Use Tax Commission**, 04-0473, p. 23 (La. 4/1/05), 903 So.2d 1071, 1086.

Louisiana Code of Civil Procedure Article 3321 expressly provides that it is applicable “during the period of administration.” Article 3321 further states that “[w]hen a succession is sufficiently solvent ... heirs ... *shall* be entitled to a reasonable periodic allowance ... if ... necessary, provided the sums so advanced ... are within the amount *eventually* due them....” (Emphasis added.) The use of *shall* makes the grant of an allowance to a surviving spouse, heir, or legatee mandatory if the other conditions and requirements are met. Herein, the majority fails to define *eventually* but interprets Article 3321 in light of the decedent’s testamentary provisions creating the trust and the Trust Code,<sup>3</sup> declaring that an allowance for maintenance is only authorized if the sums to be advanced would be within the amount due them *immediately when the succession administration ends*. Since the

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<sup>3</sup> The majority focuses on trust statute La. R.S. 9:1841, which provides:

The *legitime* or any portion thereof *may be placed in trust provided*:

(1) The *trustee* after taking into account all of the other income and support to be received by the forced heir during the year *shall distribute to the forced heir*, or to the legal guardian of the forced heir, *funds* from the net income in trust *sufficient for* the health, maintenance, *support*, and education of the forced heir.

(2) The forced heir’s interest is *subject to* no charges or conditions except as provided in *R.S. 9:1843, 1844*, 1891 through 1906 and Subpart B of Part III of this Chapter.

(3) Except as permitted by R.S. 9:1844, the term of the trust, as it affects the legitime, does not exceed the life of the forced heir; and

(4) The principal shall be delivered to the forced heir or his heirs, legatees, or assignees free of trust, upon the termination of the portion of the trust that affects the legitime.

(Emphasis added.)

decedent has attempted to place the forced heirs' legitime in a trust, via will, but the will establishing the trust has not yet been found valid and implemented by the district court, it is unknown whether the forced heirs' forced portion will be held in trust or subject to a legal usufruct (or even to recognize the possibility that the surviving spouse may predecease the termination of the succession administration, as the majority does vis-à-vis the forced heirs' survival relative to the usufruct and/or trust term); however, the uncertainty of the outcome of these potential future events makes it clear that the Article 3321 interim allowance sought should be determined based on the present factual circumstances of the parties rather than the potential future circumstances. Instead, the majority chooses to predict that the decedent's testamentary provisions creating a trust and naming the surviving spouse as the income beneficiary will be the resulting outcome of the succession administration and must therefore be taken into account in determining whether an La. C.C.P. art. 3321 interim allowance should be awarded while the succession is under administration.

The majority posits that the reason underlying the Legislative provision of an La. C.C.P. art. 3321 allowance to a surviving spouse, heir, or legatee is simply "to provide an advance on amounts due upon the termination of the administration of a succession." (Slip op. at p. 14.) To the contrary, Revision Comment (a) to Article 3321 specifies the underlying purpose for its enactment:

This article codifies the principles announced in **Succession of Broadaway**, 3 La. Ann. 591 (1848); **Succession of Ledet**, 175 La. 225, 143 So. 56 (1932); and **Succession of Wengert**, 180 La. 483, 156 So. 473 (1934). The **Broadaway** case holds that the administrator has the right to make reasonable advances to the widow and minor heirs and that such advances are chargeable to the persons who receive them. In **Succession of Ledet**, an order for the payment of \$75.00 per month out of an estate of \$50,000.00 for the support of two minor children was approved. In **Succession of Wengert**, the court affirmed a judgment ordering the executor to pay to the widow \$120.00 in monthly installments of \$40.00. The estate amounted to about \$9,000.00, and the widow was a legatee of real estate valued at \$3,000.00, and cash in the amount of \$770.00.

The cited cases involved either the widow or minor heirs. The above article, however, extends the rule to any heir or legatee.

Further examination of the jurisprudence quoted by the redactors of Article 3321 illustrates that the purpose of Article 3321 was not merely “to permit an advance during the administration of the estate” to a surviving spouse, heir, and/or legatee, as stated by the majority.

In **Succession of Broadaway**, 3 La. Ann. 591, 592, 1848 WL 3661, 1 (1848), the succession property was under administration, the succession was solvent, and the necessity for an interim allowance to the surviving spouse of the deceased was shown. The **Broadaway** court stated that the sums were “disbursed *for the support* of the widow and heirs of the deceased.” **Id.** (emphasis added). Under these circumstances, this court held that the succession administrator “violated no duty of his trust in making reasonable advances to the widow ... but these constitute charges against her as surviving partner of the community ... and not against the succession generally.” **Id.** This court further held that the recipients of an interim allowance would “be considered as having received those amounts as advances on account of their shares, and the administrator will be entitled to a credit for all such payments.” **Id.**

Citing **Succession of Broadaway**, this court in **Succession of Ledet**, 175 La. 225, 228, 143 So. 56, 57 (1932), held that when a succession is under the care of the administrator and is solvent, the administrator is authorized to make any necessary advances for the support of the surviving widow in community and of the heirs, but such advances must be charged to the widow and the heirs, who, on a partition of the succession, will be considered as having received the amount so advanced on account of their shares, and the administrator will be entitled to credits accordingly. The court noted that the advance was “to pay \$250 to the widow, as tutrix, *for the support of* her two *children*, about 6 and 8 years of age, respectively. They and their

mother are *in necessitous circumstances*.” *Id.*, 175 La. at 226, 143 So. at 56 (emphasis added). Finding the succession was under administration and solvent, and that the heirs seeking an interim allowance had established that interim allowances were necessary for their support, this court held that “we have no doubt that the funds can be made available for such a small payment, considering the size of the estate, originally, and the exigency.” **Succession of Ledet**, 175 La. at 228, 143 So. at 57.

In **Succession of Wengert**, 180 La. 483, 492, 156 So. 473, 475-76 (1934), this court, citing **Succession of Broadaway** and **Succession of Ledet**, held that the court order for the succession administrator to make interim allowance payments to the widow of the deceased was justified by the exigency of the case, since “[i]t is well settled that where a succession, under administration, is thoroughly solvent, and the *widow* is *in necessitous circumstances*, the judge may compel the executor or administrator to advance to her an allowance sufficient *for her maintenance*, provided the sums to be thus advanced and charged to her account are well within the amount eventually coming to her.” (Emphasis added.)

When read together, Revision Comment (a) to Article 3321 and the cases of **Succession of Wengert**, **Succession of Ledet**, and **Succession of Broadaway** reveal the intent underlying the enactment of Article 3321, i.e., when a succession is “sufficiently solvent” and “maintenance during the period of administration” is “necessary,” the “surviving spouse, heirs, or legatees shall be entitled to a reasonable periodic allowance in money for their maintenance during the period of administration.” However, the Legislature placed a limit on the right to an interim allowance amount – that it be “within the amount eventually due” a surviving spouse, heir, or legatee.<sup>4</sup> The majority concludes that “eventually due” means

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<sup>4</sup> For the majority to say that the limit (that sums advanced can only be “within the amount eventually due”) placed on the right (to an allowance for maintenance), is the purpose in and of itself for the codal article (which is entitled “Interim *allowance for maintenance* during administration” and *not* “Interim *advance* on inheritance” (emphasis added)) is to mistake the clear and unambiguous intent expressed in the text of the codal article and its revision comments.

immediately when the administration of the succession terminates.<sup>5</sup>

“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” La. C.C. art. 9. “The words of a law must be given their generally prevailing meaning.” La. C.C. art. 11.

According to Merriam-Webster Dictionary (<https://www.merriam-webster.com/dictionary>), “eventually” means “at an unspecified later time : in the

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<sup>5</sup> In so holding, the majority opinion emphasizes language from the **Succession of Broadaway** opinion (that the **Broadaway** court stipulated: “on a partition, those parties will be considered as having received those amounts as advances on account of their shares, and the administrator will be entitled to a credit for all such payments” (slip op. at p. 9 (emphasis omitted); **Succession of Broadaway**, 3 La. Ann. at 592); however, this language from the **Broadaway** opinion does not support the majority opinion in this case and, to the contrary, the **Broadaway** opinion recognizes that the advance received by the widow could not necessarily be charged to her at the closing of the succession, but could only be charged to her share of the estate when a partition of succession property occurred. Thus, the majority opinion’s statement (that “[i]n each of these cases [**Succession of Wengert**, **Succession of Ledet**, and **Succession of Broadaway**] the Court considered the allowance requested in relation to the amounts that would be received at the judgment of possession and assuming the facts applicable at the time the motion for interim allowance was considered” (slip op. at p. 11)) is not supported by the language in these cases. The cases codified in La. C.C.P. art. 3321 (**Succession of Wengert**, **Succession of Ledet**, and **Succession of Broadaway**) were all opinions of less than ten paragraphs, and financial comments made in two of the three cases were related exclusively to the solvency of the succession during administration (with **Succession of Wengert** making no mention of a charge of the sums advanced for maintenance to be made against the share of the estate to be received by the recipient, and with **Succession of Ledet** also making no such remark regarding a charge against the maintenance recipient’s share (though **Succession of Broadaway** was quoted)). The language quoted by the majority opinion herein does appear in the six-paragraph **Succession of Broadaway** opinion, but the timing of the referenced “partition” was not specified, and the stated facts did not indicate that such a partition was likely to occur during the administration of the succession, as the issue of the propriety of maintenance payments made to the surviving spouse was raised in opposition to the inclusion of these payments in the administrator’s accounting; the **Broadaway** court particularly noted that some succession property had been sold to pay debts, but “[t]he residue was preserved in kind, and the revenues derived from it applied to the discharge of the debts of the succession, and to the support of the widow and minor heirs.” **Succession of Broadaway**, 3 La. Ann. at 591-92. Significantly, in **Succession of Broadaway**, the property left by the decedent was stated as being community property with the widow, and the other heirs were children of the marriage; therefore, a partition of the remaining succession property would not necessarily have occurred by the time the succession administration terminated. *Id.* Despite this fact, an allowance for maintenance of the **Broadaway** children/heirs was paid during the succession administration. *Id.* Thus, the majority statement herein (that “[r]eviewing these cases and the language of La. C.C.P. art. 3321 together, the apparent purpose of La. C.C.P. art. 3321, which is titled “Interim allowance for maintenance during administration,” is to alleviate the burden a succession administration may have on individuals who are owed something after the period of administration and require an advance on the amounts they are owed”) is correct, though apparently not in the way intended, since recipients of Article 3321 maintenance must be “owed something after the period of administration” to be entitled to the Article 3321 allowance, but it does not follow that that “something” must be owed at the exact time the succession administration concludes, particularly since Article 3321 explicitly states “within the amount *eventually* due them.” (Emphasis added.)

end,” and synonyms for “eventually” include “finally, someday, sometime, sooner or later, ultimately, [and/or] yet.”

Applying the generally prevailing meaning for “eventually” to the relevant portion of La. C.C.P. art. 3321 at issue, means that “[w]hen a succession is sufficiently solvent, the surviving spouse, heirs, or legatees shall be entitled to a reasonable periodic allowance in money for their maintenance during the period of administration, if the court concludes that such an allowance is necessary, provided the sums so advanced to the spouse, heirs, or legatees are within the amount eventually [i.e, finally, someday, sometime, sooner or later, ultimately, or yet] due them.” The generally prevailing meaning for “eventually” *may* encompass an *immediate* entitlement (i.e., at the same time that the succession administration concludes) to an inheritance, but clearly it is *not restricted* to an *immediate* entitlement to inheritance, as an *eventual* entitlement to an inheritance also encompasses an entitlement to inheritance *finally, someday, sometime, sooner or later, ultimately, or yet.*<sup>6</sup>

The majority opinion further examines the Trust Code and also “the terms of the relevant trusts to which Decedent’s estate may be distributed,” in connection with its determination of “whether the person requesting an interim allowance will

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<sup>6</sup> See also La. C.C. art. 890 (“If the deceased spouse is survived by descendants, the surviving spouse shall have a usufruct over the decedent’s share of the community property to the extent that the decedent has not disposed of it by testament. This usufruct terminates when the surviving spouse dies or remarries, whichever occurs first.”); La. C.C. art. 1495 (“Donations inter vivos and mortis causa may not exceed three-fourths of the property of the donor if he leaves, at his death, one forced heir, and one-half if he leaves, at his death, two or more forced heirs. The portion reserved for the forced heirs is called the forced portion and the remainder is called the disposable portion.”); La. R.S. 9:1841 (“The legitime in trust may be burdened with an income interest or with a usufruct in favor of a surviving spouse to the same extent and for the same term that a usufruct of the same property could be stipulated in favor of the same person for a like period.”); La. R.S. 9:1844, 1964 Revision Comment (c) (“An income interest in a trust is an alternative to a usufruct. While the rights of an income beneficiary may not be precisely the same as the rights of a usufructuary because the nature of the property and consequent rules of administration and apportionment of expenses and income may differ, the vesting of an income interest in a trust as the substantial equivalent of a usufruct complies with the requirements of this section, provided the trust instrument creates no greater rights in the income beneficiary than the rights that would exist under this Code if the trust instrument contained no provisions with respect to administration, contribution of expenses, or apportionment of income.”).

be 'eventually due,' upon the termination of the succession administration, cash and/or property from which cash may be made available in value exceeding the advance requested." (Slip op. at p. 12.) The intermingling, by the majority, of its inquiry into the decedent's trust provisions, as set forth in his will(s), in light of the Trust Code, with an interpretation of the proper application of La. C.C.P. art. 3321 is problematic since Article 3321 is concerned with the needs of the party seeking the Article 3321 allowance, the solvency of the succession at the time the allowance is sought (during the administration of the succession), and whether the party's share of the estate when "eventually" received is sufficient to cover the sums so advanced. These financial inquiries, with respect to forced heirs (whose forced portion is subject to a legal usufruct or the similar trust income beneficiary status and who will *eventually* receive ownership of succession property), have nothing to do with the trust provisions since the trust will not officially exist until a probate judgment becomes final, putting the trust into effect. The meaning of La. C.C.P. art. 3321's use of the word "eventually" is the only real issue in this matter.

The majority also voices the necessity of "harmonizing" the provisions of La. C.C.P. art. 3321 with the Trust Code's La. R.S. 9:1841; however, this is unwarranted since these provisions effectively apply consecutively rather than concurrently -- Article 3321 applies while the succession is under administration only, while the Trust Code becomes relevant only after a judgment is rendered giving effect to a valid will that creates the trust. The majority considers whether the decedent, in establishing a trust within his testament(s) and making his spouse the exclusive income beneficiary, precludes an La. C.C.P. art. 3321 interim allowance of maintenance to the forced heirs, reasoning that "with respect to provisions of the Trust Code, in particular, courts are instructed to apply a liberal construction of the code in favor of freedom of the settlor's disposition," citing La. R.S. 9:1724 ("The provisions of this Code shall be accorded a liberal construction in favor of freedom

of disposition.”). Yet, since none of the decedent’s three wills has been ruled valid and/or given effect by the district court, so as to render the trust set up therein operative, consideration of the trust provisions is not relevant during the succession administration for purposes of Article 3321.

Accordingly, it should be concluded that the unambiguous language of Article 3321 allows the district court to evaluate the factors set forth therein to determine whether a surviving spouse, heir, or legatee is entitled to an interim allowance even though the entitlement to be placed in possession of a share of the decedent’s estate may not occur until some eventual or future date. The legislative intent underlying Article 3321 is to authorize an interim allowance for maintenance to a surviving spouse, heir, or legatee, during administration of a succession, when necessary and if the succession is sufficient solvent; not simply “to provide an advance on amounts due upon the termination of the administration of a succession” as stated by the majority. (Slip op. at p. 14.)

For the reasons stated, I would reverse the decision of the court of appeal, reinstate the judgment of the district court, and remand to the district court for further proceedings.



**SUPREME COURT OF LOUISIANA**

**No. 2021-CC-01521**

**SUCCESSION OF RAYMOND JOHN BRANDT**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIFTH  
CIRCUIT, PARISH OF JEFFERSON**

**Genovese, J., dissents for the reasons assigned by Justice Hughes.**