STATE OF MINNESOTA

IN SUPREME COURT

A21-1420

Court of Appeals — Anderson, J.

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

Filed: July 5, 2023
Office of Appellate Courts

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Chad M. Roggeman, Matthew W. Moehrle, Rajkowski Hansmeier, Ltd., Saint Cloud, Minnesota, for appellant Michael Tomczik.

Richard L. Hendrickson, Richard L. Hendrickson, P.A., Osseo, Minnesota; and

Karen R. Cole, Minneapolis, Minnesota, for respondents Calvin Headley and Patricia Headley.

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S Y L L A B U S

An alternate residuary clause of a will containing a devise to the heirs of the testator's spouse was nullified after dissolution of the testator's marriage because the class of heirs ceased to exist.

Reversed.

## O P I N I O N

ANDERSON, Justice.

This case involves the interpretation of an alternate residuary clause in a will devising half of the testator's estate to his heirs-at-law and the other half to his wife's heirs-at-law.[1] In 1995, Mathew Joseph Tomczik executed a will naming his then-wife Sara, if she survived him, as the primary beneficiary of the residue of his estate, with an alternate residuary clause devising one-half of his estate to his wife's "heirs-at-law." The couple's marriage was dissolved in 2019, and Mathew passed away in 2021 without revising his will. Appellant Michael Tomczik, Mathew's brother and the personal representative of his estate, petitioned for formal probate of the will, identifying only Mathew's siblings as heirs and devisees. Sara's parents, respondents Calvin and Patricia Headley, objected, claiming that they are Sara's heirs and were wrongfully omitted as devisees in the petition. The district court ruled that the devise to Sara's heirs failed as a matter of law. A divided panel of the court of appeals reversed. Because we conclude that the devise to the class of the former wife's heirs fails as a matter of law, we reverse the court of appeals.

## FACTS

The underlying facts in this case are undisputed. Mathew and Sara were married in 1992. Mathew and Sara had no children, and the marriage was dissolved in February 2019.

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[1] A residuary clause in a will "disposes of any estate property remaining after the satisfaction of all other gifts," *Residuary Clause*, *Black's Law Dictionary* (11th ed. 2019), and an alternate residuary clause comes into force when, for some reason, the residuary clause cannot take effect as the testator intended.

After the dissolution of their marriage, Mathew never revised his will and died in January 2021, unmarried and with no children. Sara also did not remarry and has no children. The couple had executed reciprocal wills, with Mathew's will executed in 1995. The parties do not dispute that the devise to Sara is revoked by operation of the Minnesota Uniform Probate Code, which provides that a former spouse who remains named in a will is deemed to have died immediately before the marriage was dissolved. *See* Minn. Stat. § 524.2-804, subds. 1–2 (2022). Because neither Mathew nor Sara had any children, and any devise to Sara is revoked, the alternate residuary clause of the will is applicable. That alternate residuary clause provides as follows:

> 3. I give the residue of my estate, consisting of all property which I can dispose of by Will and not effectively disposed of by the preceding articles of this Will, except any property over which I may then have a testamentary power of appointment, as follows:
>
> . . . .
>
> 3.4 If any interest is not effectively disposed of by the preceding provisions of this article, one half (1/2) [sic] 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 [wife[2]] and me) under, and take the shares prescribed by, Minnesota statutes of intestate succession in force at the execution of this Will, applied as if each of us had then died intestate.

[2] The parties do not dispute that article 3.4 of the will contains a typographical error. In that paragraph, the will states that "[t]he heirs-at-law of each of us shall be determined (as of the date of death of the survivor of my husband and me) under, and take the shares prescribed by, Minnesota statutes of intestate succession." The parties do not dispute that the word "husband" in this provision should be "wife."

The will also contains a similar provision, article 4.4, for Mathew's life-insurance trust.[3]

After Mathew's death, Michael Tomczik, Mathew's brother and personal representative of his estate, petitioned the district court for formal probate of the will. The petition identified Mathew's siblings as his heirs and devisees. The petition also stated that Sara had no legal interest because of the dissolution of the marriage and did not identify the Headleys, Sara's parents, as having any legal interest.

Sara did not claim to be a devisee, but the Headleys objected to the petition, claiming that, as Sara's heirs, they were wrongfully omitted as devisees under Mathew's will. Under the intestate-succession statute in operation when Mathew executed the will, which remains unchanged to the present, Sara's current heirs[4] would be her parents. *See* Minn. Stat. § 524.2-103(2) (2022).

On cross-motions for summary judgment, the district court granted summary judgment in favor of the personal representative. The district court explained that, at the time of his death, Mathew "did not have a wife due to the dissolution of marriage," so the

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[3] Article 3.4 of the will uses the phrase "my wife's heirs-at-law," and article 4.4 uses the phrase "my wife's heirs," which are equivalent terms. *See Heir*, *Black's Law Dictionary* (11th ed. 2019) (stating that an "heir" is "[a]lso termed *legal heir*, *heir at law*," as well as several other terms); *see also* Mark B. Dunnell, *Mason's Dunnell on Minnesota Probate Law* 293 (3d ed. 1969) ("The words 'heirs,' 'heirs at law,' 'lawful heirs' and the like in a will are to be construed as meaning those who would take if the testator or other ancestor died intestate, unless they were obviously used in a different sense by the testator." (footnote omitted)).

[4] Heirs are, in fact, determined at the time of death. *See In re Fretheim's Est.*, 194 N.W. 766 (Minn. 1923) ("The legal relation or status of 'heir' . . . arises only upon the death of the ancestor . . . ." (quoting *Tuttle v. Woolworth*, 50 A. 445, 447 (N.J. Ch. 1901))). Sara is in fact alive, however, so this determination presumes the legal fiction of Sara's death by operation of Minnesota Statutes section 524.2-804, subdivision 2.

"devise to '*my* wife' is null and void." The district court therefore ruled that "any purported devise to '*my* wife's' heirs fails" as a matter of law and that the Headleys are not devisees of the will.

A divided panel of the court of appeals reversed in a precedential opinion. *In re Est. of Tomczik*, 976 N.W.2d 143, 145 (Minn. App. 2022). The court of appeals concluded that, because "a former spouse who remains named in a will is deemed to have died immediately before the dissolution of the marriage," and "the residual-beneficiary terms of the will unambiguously devise one-half of the residual estate to the former spouse's heirs," the unambiguous will demonstrates that "the former spouse's heirs are devisees." *Id.* at 145, 149. Although "[m]any may agree . . . that devises to a former spouse's heirs should be revoked following dissolution," the court of appeals noted that "the legislature has not adopted a statute reflecting that policy." *Id.* at 149.

We granted the personal representative's petition for review to determine whether a gift to a spouse's heirs, none of whom are identified by name, fails if the marriage dissolves after execution of the will.

## ANALYSIS

We review a district court's grant of summary judgment de novo, examining whether there are any genuine issues of material fact and whether the district court properly applied the law. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). This case requires us to interpret the meaning of a will within the framework of the Minnesota Uniform Probate Code, Minnesota Statutes sections 524.1-100 to 524.8-103 (2022). We also review issues of statutory and will interpretation de novo. *Hagen v. Steven*

*Scott Mgmt., Inc.*, 963 N.W.2d 164, 169 (Minn. 2021) (statutory interpretation); *In re Est. of Bach*, 979 N.W.2d 430, 433 (Minn. 2022) (will interpretation). "Under the de novo standard, we do not defer to the analysis of the courts below, but instead we exercise independent review." *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018).

Our "cardinal rule of construction . . . is that the intention of the testator, as expressed in the language used in the will, shall prevail, if it is not inconsistent with the rules of law." *Bach*, 979 N.W.2d at 434 (alteration in original) (internal quotation marks omitted) (quoting *In re Tr. Created by Will of Tuthill*, 76 N.W.2d 499, 502 (Minn. 1956)). Therefore, when construing a will, the primary purpose is to discern the testator's intent. *In re Wyman*, 308 N.W.2d 311, 315 (Minn. 1981). If a will is unambiguous, extrinsic evidence may not be used to show "that [a] testator meant to say something more." *In re Silverson's Will*, 8 N.W.2d 21, 23 (Minn. 1943). Nonetheless, the court "ascertain[s] the actual intention of the testator as it appears from a full and complete consideration of the entire will when read in light of the surrounding circumstances at the time of the execution of the will." *In re Hartman*, 347 N.W.2d 480, 482–83 (Minn. 1984); *see also Bach*, 979 N.W.2d at 434 (explaining that we discern intent from the language of the will in view of surrounding circumstances and "do not focus on isolated words"); *Tuthill*, 76 N.W.2d at 502.

Historically, under the common law, a divorce did not operate to revoke a testamentary disposition in favor of a former spouse. *See* Mark B. Dunnell, *Mason's Dunnell on Minnesota Probate Law* 207 (3d ed. 1969). Because this "led to unsatisfactory results as a divorced spouse generally was no longer a natural object of the testator's

bounty," many states enacted statutes revoking provisions to a former spouse in a will. *Calloway v. Est. of Gasser*, 558 S.W.2d 571, 575 (Tex. Civ. App. 1977) ("In order to rectify the situation, the legislature of this State, as well as a number of other states, enacted statutes specifying that, as a matter of law, a divorce operates as a revocation of that part of a will making provisions for a former spouse."). Recognizing that "[t]he legal system has long used default rules to resolve estate litigation in a way that conforms to decedents' presumed intent," rising rates of divorce by the 1980s led almost all states to enact "revocation-on-divorce statutes," such as section 524.2-804, which "treat an individual's divorce as voiding a testamentary bequest to a former spouse." *Sveen v. Melin*, 584 U.S. __, 138 S. Ct. 1815, 1819 (2018). These statutes "rest on a 'judgment about the typical testator's probable intent.' " *Id.* (quoting R. Sitkoff & J. Dukeminier, *Wills, Trusts, and Estates* 239 (10th ed. 2017)).

When a marriage is dissolved, the Minnesota Uniform Probate Code generally revokes any "disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse" when a will was executed before the marriage was dissolved. Minn. Stat. § 524.2-804, subd. 1. The statute explains that the effect of revocation is that provisions of a will "are given effect as if the former spouse died immediately before the dissolution." *Id.*, subd. 2.[5] The statute does not specifically

[5] The parties neither cite nor argue about the effect of this provision, but it is worth noting that Minnesota Statutes section 524.2-802, in turn, provides that "[a] person whose marriage to the decedent has been dissolved . . . is not a surviving spouse."

address devises to relatives or heirs of a former spouse. The statute specifies that no other change of circumstances "effects a revocation." *Id.*, subd. 4.

The personal representative argues that section 524.2-804 is irrelevant here because that section addresses a devise to a former spouse; here, the issue involves the *heirs* of the former spouse. Because Sara was no longer Mathew's "wife" at the time of his death, the personal representative argues that the phrase "my wife's heirs-at-law" refers to a group of individuals that no longer exists; if Mathew had no wife, the class of his wife's heirs is a class of zero. The Headleys, on the other hand, acknowledge that section 524.2-804 revokes any devise to a former spouse—here, their daughter Sara—but they argue that the statute does not operate to nullify any provisions of the will benefiting the heirs of the former spouse. Moreover, the Headleys argue that this class of heirs still exists because the will provides that "[m]y wife's name is Sara Tomczik and all references in this Will to my wife or my spouse are to her only." According to the Headleys, the word "wife" is a descriptive term rather than a limiting term, so a gift to the heirs of Mathew's "wife" does not fail merely because Sara ceased being his wife.

We agree with the personal representative. We begin with the observation that, although we have not previously addressed this issue, our court of appeals, as well as other jurisdictions, have concluded that when a will both names an individual and refers to that individual by his or her relationship to the testator, a gift to that individual does not necessarily become invalid if the individual no longer has that same relationship with the testator at the time of the testator's death. *See In re Est. of Kerr*, 520 N.W.2d 512, 514 (Minn. App. 1994) (explaining that a bequest to "my stepdaughter, Dawn M. Valentine"

was not rendered invalid by the testator's dissolution of marriage, which meant that Dawn M. Valentine was no longer his stepdaughter, because the word "stepdaughter" was a descriptive term rather than a limiting term (internal quotation marks omitted)). Here, the court of appeals concluded that "my wife's heirs-at-law" was just such a reference and was "not persuaded . . . that a failure to specially name Sara's heirs in the will . . . is critical." *Tomczik*, 976 N.W.2d at 147. But in cases in which courts, both in our own and in other jurisdictions, have deemed a relational term to be merely descriptive and not limiting, not only has the relational term been a descriptor of the specific individual or individuals actually entitled to take (unlike here, where it is the unascertained *heirs* of the "wife" who argue they have a right to take under the will), but the term has generally been used *in conjunction* with the name of an individual or individuals. *See, e.g.*, *In re Will of Dezell*, 194 N.W.2d 190, 191–92 (Minn. 1972) (holding that the language "to my daughter-in-law, Margaret Dezell," entitled the former daughter-in-law to take despite the dissolution of her marriage); *Kerr*, 520 N.W.2d at 514; *In re Est. of McGlone*, 436 So.2d 441, 441 (Fla. Dist. Ct. App. 1983) (holding that the terms "husband" or "wife" are *descriptio personae*[6] "where he or she is named as well as described as 'husband' or 'wife,' " (quoting 80 Am. Jur. 2d Wills § 1224 (1975))); *In re Application of Carleton*, 432 N.Y.S.2d 441, 443 (N.Y. Surr. Ct. 1980) (holding that after dissolution, language that bequeathed items to "my nephew and wife, Carl R. Baker and Helen L. Baker" entitled the former wife to take under the will). That is not the circumstance here.

[6] *Descriptio personae* refers to a description of a person to identify someone in a legal instrument. *See Descriptio Personae*, *Black's Law Dictionary* (11th ed. 2019).

Inclusion of Sara only in the definitions section of the will, section 7.1.1, distinguishes the will at issue here from this line of cases. The use of the phrase "my wife's heirs-at-law" is not used in the operative portions of the will as a descriptor of any named individual or individuals; rather, it "signal[s] the testator's paramount intention to describe the beneficiaries not as individuals but as members of a group identified by familial ties." *Est. of Hermon*, 46 Cal. Rptr. 2d 577, 581 (Cal. Ct. App. 1995). As such, "the matter of relationship to the testator at the time of the testator's death should be taken into consideration." *Id.* The only identifier present in the operative provisions of this will is the marriage-based group "my wife's heirs-at-law." Mathew had no wife at the time of his death when his will became operative. Because Mathew had no wife at the time of his death, the class of his "wife's heirs-at-law" no longer existed, and any gift to them must therefore fail.

In the circumstances of this probate matter, this conclusion is consistent with the intent of the testator. *See id.* (concluding that, based on the intent of the testator, "my spouse's children" referred to a class that ceased to exist after the marital dissolution). At the time the will was executed, Mathew and Sara "intended to be married until 'death do they part,' " after which "their property would be equally divided between their respective families under the terms of the alternate residuary clause." *In re Est. of Danca*, No. C1-98-1497, 1999 WL 232664, at *3 (Minn. App. Apr. 20, 1999). When a marriage ends in dissolution rather than death, and property is then divided between the two upon the dissolution, "[t]o now distribute another share of testator's property to h[is] ex-spouse's family would be contrary to the intent demonstrated by the will and surrounding

circumstances at the time of execution." *Id.* Because the assets of a married couple are divided between the two upon the dissolution of their marriage—a circumstance testators are presumed to know—we conclude that when the will was executed, Mathew clearly intended the phrase "my wife's heirs-at-law" to refer only to members of a group defined by familial ties and not individually contemplated beneficiaries. *See In re Tr. Created by Will of Patrick*, 106 N.W.2d 888, 890 (Minn. 1960) (explaining that "[i]t has been said that in the construction of wills every testator is presumed to know the law," which means that "the words of a will should be construed in accordance with precedents and statutes unless it is established by a preponderance of evidence that a testator intended some other meaning"). These circumstances at the creation of Mathew's will—that Mathew was married and intended to be married until death, with the knowledge that his assets would be divided between him and Sara in the event of dissolution—are significant.

The court of appeals concluded, however, that because the will provided for a class gift, a "principal attribute" of which 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," then "[n]aming 'my wife's heirs' would have been impossible when Mathew executed the will because the members of the class were determined on his death." *Tomczik*, 976 N.W.2d at 147 (citation omitted) (internal quotation marks omitted). According to the court of appeals, because " '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," the gift to Sara's heirs is valid. *Id.* at 148.

This inference—that the will reflects an intent to give to the heirs of Mathew's former spouse should his marriage dissolve—is inconsistent with the facts in light of the surrounding circumstances explained above. In construing a will to effectuate the intent of the testator, the court does not read the language of the instrument in a vacuum. Rather, "[i]f the court is to determine the testator's intent based on the language of the will in light of the surrounding circumstances, it should draw those inferences from the surrounding circumstances that most closely reflect the plain meaning of the language." *Hartman*, 347 N.W.2d at 484. The reasonable inference in light of the surrounding circumstances at the time the will was executed is that Mathew intended for the beneficiaries under the alternate residuary clause to be defined in terms of their familial relation to him and that, should his and Sara's assets be divided at dissolution (at which point Sara ceased to be his "wife"), her heirs would not take under the will.

Here, moreover, the fact that the will's alternate residuary clause provides for a class gift makes it clear that no particular relationships with any identified individual beneficiaries were contemplated, further belying any contention that Mathew specifically intended for the Headleys to collect under the will should his marriage dissolve. As explained previously, the devise made in the alternate residuary clause here was to a class of heirs, who were unascertained at the time the will was executed and could only be ascertained upon the death of both Mathew and Sara. When the will was executed, the devise in sections 3.4 and 4.4 to a class of unascertained heirs to be determined based on "Minnesota statutes of intestate succession" negates any argument that Mathew's intent was to specifically give to the Headleys based on any close relationship to his mother- and

father-in-law. Mathew could not have known whether the Headleys would continue to be Sara's heirs when his will became effective. Instead, the circumstances in which the will was executed—that Mathew and Sara were married and intended to be married until death—and the will's language creating a class gift to unascertained heirs, defined only by reference to Mathew's "wife," reinforces our conclusion that the alternate residuary clause was only intended to devise to a group restricted by familial relations. Again, the reasonable inference in light of the surrounding circumstances at the time the will was created is that that group—Mathew's "wife's heirs-at-law"—ceased to exist after Mathew and Sara's marriage ended by dissolution.

Section 524.2-804 does not compel a different result. That law provides a "default rule" the Legislature adopted "to resolve estate litigation in a way that conforms to decedents' presumed intent." *Sveen*, 584 U.S. at __, 138 S. Ct. at 1818–19, 1822. It would be unreasonable to conclude that the Legislature intended to revoke a devise to a former spouse but leave untouched a devise to the *relatives* of the former spouse—which could include the parents of the former spouse, as is the case here—to the detriment of the testator's own heirs. *See Stevens v. Fed. Cartridge Corp.*, 32 N.W.2d 312, 315 (Minn. 1948) ("It is the duty of the court so to construe statutory enactments as to give effect to the obvious legislative intent."). The Headleys' status as beneficiaries is derived solely from their relationship to their daughter, Mathew's former spouse, whose disposition is specifically revoked under the Minnesota Uniform Probate Code due to the dissolution of their marriage. *See* Minn. Stat. § 524.2-804. Revoking a devise to a former spouse's relatives is the "logical inference" of the revocation of a devise to the former spouse. *See*

*Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 683 n.5 (Minn. 2012) (declining to adopt a narrower statutory interpretation based on legislative silence, but instead "draw[ing] a logical inference from words that do appear in the statute" to determine statutory meaning). By passing such a statute revoking a devise to a former spouse upon divorce, the Legislature concluded "that the average Joe does not want his ex inheriting what he leaves behind," *Sveen*, 584 U.S. at __, 138 S. Ct. at 1819, and it would be unreasonable to suppose that the Legislature at the same time concluded that the typical decedent wants his former spouse's *relatives* inheriting what he leaves behind. *See Knopp v. Gutterman*, 102 N.W.2d 689, 695 (Minn. 1960) ("Statutes must be construed with reference to the objects sought to be accomplished and that which is implied in a statute is as much a part of it as that which is expressed.").[7]

Our mandate is to effectuate the intent of the decedent; we require no further express statutory sanction to act when this intent is clear. The language of Mathew's will, read in the light of the surrounding circumstances at the time of the will's creation, reveals that Mathew only intended for the residue of his estate to pass, by operation of the will's alternate residuary clause, to a group of his spouse's heirs defined through their familial

[7] The court of appeals also concluded that it "cannot ignore the legislature's omission of this provision" voiding testamentary gifts to the relatives of a former spouse and declined to hold that a devise to the heirs of a former spouse was revoked because the Legislature has not amended the statute to that effect. *Tomczik*, 976 N.W.2d at 148. But we generally do not ascribe any legislative intent to the Legislature's *failure* to enact legislation. *See Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 521 n.11 (Minn. 2005) (reasoning that "it is impossible to accurately speculate as to the meaning that should be ascribed to such inaction"). Therefore, the Legislature's failure to amend the statute with a specific provision voiding testamentary gifts to relatives of a former spouse does not affect our analysis.

relationship to Mathew as the heirs of his "wife"—a relationship that would cease to exist if Mathew's marriage ended in dissolution.

If we were to hold otherwise, a number of problematic circumstances could arise. For example, as the dissent in the court of appeals explained, if Sara had remarried, "Sara's new husband would be a beneficiary of a portion of Mathew's residual estate," which "would undoubtedly be contrary to both the testamentary intent of the decedent and Minn. Stat. § 524.2-804." *Tomczik*, 976 N.W.2d at 150 (Segal, C.J., dissenting). In another scenario, if Sara had living children from a previous marriage, those children would inherit a portion of the residue of Mathew's estate because they would be her heirs. *See In re Est. of Coffed*, 387 N.E.2d 1209, 1209, 1211 (N.Y. 1979). Given that the intent of the testator is of central importance, the application of a rule leading to results so clearly contrary to that intent would fail to fulfill the purpose of the courts under the Minnesota Uniform Probate Code. *See Wyman*, 308 N.W.2d at 315 ("The primary purpose of construing a will . . . is to discern the testator's intent.").

**CONCLUSION**

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.