STATE OF MICHIGAN

COURT OF APPEALS

In re JOSEPH & SALLY GRABLICK TRUST.

KATELYN BANASZAK,

Appellant,

v

DOROTHY GRABLICK and JUDITH ALMASY,

Appellees,

and

JEFFREY GRABLICK, CRAIG L. WHITE, Trustee of the JOSEPH & SALLY GRABLICK TRUST, SALLY GRABLICK, J. M. DAVID HICKMOTT, LOUIS J. STEFANKO, NANCY HICKMOTT, JAMES HICKMOTT, and STEPHANIE ATCHISON,

Other Parties.

FOR PUBLICATION
December 16, 2021
9:20 a.m.

No. 353951
Genesee Probate Court
LC No. 19-213790-TV

In re JOSEPH GRABLICK ESTATE.

KATELYN BANASZAK,

Appellant,

v

DOROTHY GRABLICK and JUDITH ALMASY,

Appellees,

No. 353955
Genesee Probate Court
LC No. 19-212796-DA

and

JEFFREY GRABLICK, CRAIG L. WHITE, Personal Representative of the ESTATE OF JOSEPH GRABLICK, SALLY GRABLICK, and J. M. DAVID HICKMOTT,

Other Parties.

Before: BORRELLO, P.J., and SERVITTO and STEPHENS, JJ.

STEPHENS, J.

These consolidated appeals involve both the estate and the trust of Joseph Grablick ("the decedent"), who died in 2019. In Docket Nos. 353951 (the trust case) and 353955 (the estate case), appellant, Katelyn Banaszak, the biological daughter of decedent's ex-wife Sally Grablick, appeals as of right the June 9, 2020 order of the Genesee Probate Court granting summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) in favor of appellees, Dorothy Grablick and Judith Almasy, respectively, the decedent's mother and sister. The probate court found that appellant was not a beneficiary of the decedent's will or of the Joseph and Sally Grablick Family Trust because the dispositions to her were revoked under MCL 700.2807(1)(a)(*i*) when the decedent and Sally[1] divorced. We affirm.

I. BACKGROUND

Appellant was eight years old at the time her mother and the decedent married in October 1993 and was treated by the decedent as his daughter both during and after the marriage.

On September 28, 2005, the decedent executed his will. The will identified Sally as his spouse, and identified his living children as "Katelyn M. Wrecker, who is my step-child." Under the terms of his will, the decedent's assets were left to "The Joseph & Sally Grablick Family Trust."

On the same date, the decedent and Sally executed a trust adoption agreement and created a joint revocable trust known as "The Joseph & Sally Grablick Family Trust." The trust adoption agreement stated that the settlors were married to each other, and identified appellant[2] as the only living child of the settlors. The agreement identified the residuary beneficiary of the trust as "The above-named Child." Under the explicit terms of the trust, upon the death of either spouse, the surviving spouse was entitled to receive all principal and income, and upon the death of the

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[1] To avoid confusion, we refer to those family members with the same last name by their first names.

[2] At the time of the creation of the trust, appellant's name was Katelyn M. Walker.

surviving spouse, appellant would receive all principle and income. The agreement also provided a default provision for distribution of the trust estate to Dorothy Grablick and Judith Almasy.[3]

The decedent and Sally divorced on April 3, 2019. The decedent died on July 2, 2019. Appellant was appointed personal representative of the decedent's estate. After a will was discovered, the appellant filed a petition in the trust case and a petition for probate in the will case. Appellant also requested an order determining heirs. On January 3, 2020 the court entered a stipulated order in both cases indicating that the sole issue before the court for determination was how the statutory provision of MCL 700.2807(1)(a)(*i*) and (3) regarding the divorce of the decedent affected the appellant's interests under the putative will of the decedent dated September 28, 2005 and under the trust agreement for The Joseph and Sally Grablick Family Trust.

On March 23, 2020, appellees, Dorothy and Judith, moved for summary disposition under MCR 2.116(C)(10). Appellant filed an answer and brief in opposition to appellees' motion for summary disposition and a countermotion for summary disposition under MCR 2.116(I)(2). The probate court granted summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) in favor of appellees. The court found that appellant was not a beneficiary of the decedent's will or of the Joseph and Sally Grablick Family Trust because the dispositions to her were revoked under MCL 700.2807(1)(a)(*i*) when the decedent and Sally divorced.

This appeal followed.

II. STANDARD OF REVIEW

This issue involves questions of statutory interpretation, which this Court reviews de novo. *In re Attia Estate*, 317 Mich App 705, 709; 895 NW2d 564 (2016).

The first applicable rule of statutory construction is as follows:

> The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature. To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory. [*PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 506; 778 NW2d 282 (2009), quoting *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001), reh den 465 Mich 1204 (2001) (quotation marks omitted).]

This Court also reviews do novo a probate court's decision on a motion for summary disposition. *In re Casey Estate*, 306 Mich App 252, 256; 856 NW2d 556 (2014). "Summary

[3] The default provision provided for distribution of the trust assets in the absence of beneficiaries as follows: 1/4 to Dorothy Grablick; 1/4 to Judith Almasy; 1/6 to James and Nancy Hickmott (or to the survivor: 1/6 to Stephanie Atchison; and 1/6 to J. M. David Hickmott. The Hickmotts and the Atchisons are blood relatives of Sally. There is no dispute that their dispositions were revoked.

disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v Gen Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

III. ANALYSIS

Appellant contends that the probate court erred in its interpretation and application of MCL 700.2806(e) and MCL 700.2807(1)(a)(i) and improperly granted summary disposition in favor of appellees. We disagree.

The Revised Probate Code ("RPC"), MCL 700.124(2)[4] (repealed by MCL 700.8102(c)) specified that, in the absence of an express will provision stating otherwise, if a testator and a spouse divorced after the testator's will was executed, the testator's former spouse would be considered predeceased for the purpose of distributing the testator's property after death. The provision precluded a testator's former spouse from receiving distributions from his estate in the absence of an express provision in the will to the contrary. It did not, however, preclude the former spouse's relatives from receiving distributions from the testator's estate pursuant to the terms of the will. This provision required that "[p]roperty prevented from passing to a former spouse because of revocation by divorce passe[d] as if the former spouse failed to survive the [testator]." Therefore, if the testator's bequest to a former spouse's relative was contingent on the testator surviving his spouse, and the testator's former spouse was considered predeceased under the RPC after she and the testator divorced, then the former spouse's relative would automatically take pursuant to the terms of the testator's will, even if the former spouse was still alive.

In 2000, the Legislature repealed the RPC and adopted the Estates and Protected Individuals Code ("EPIC"). MCL 700.8101; MCL 700.8102(c). EPIC modified the circumstances under which relatives of the former spouse had any claim to the testator estate after a divorce. Specifically, MCL 700.2807 states:

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[4] MCL 700.124(2) provided:

If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as a personal representative, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce passes as if the former spouse failed to survive the decedent and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. Provisions not revoked by any means except the operation of this subsection are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. Any other change of circumstances does not revoke a will.

> (1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:
>
> (a) Revokes all of the following that are revocable:
>
> (i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

MCL 700.2806 defines certain terms used in MCL 700.2807(1)(a)(*i*) as follows:

> (a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary in a governing instrument.
>
> * * *
>
> (d) "Governing instrument" means a governing instrument executed by a divorced individual before the divorce from, or annulment of his or her marriage to, his or her former spouse.
>
> (e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

Consequently, in the absence of express terms to the contrary in the governing instrument, when a testator who has executed a will subsequently divorces his spouse, the divorce revokes any disposition or appointment of property to either the former spouse or the former spouse's relatives.

This Court has twice addressed situations in which a testator executed a will bequeathing gifts to the testator's stepchildren under the RPC, subsequent to a divorce between the testator and the step-child's parent after the effective date of EPIC. While both cases are unpublished, they give us guidance and are persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010)

The first case is *In re Fink Estate*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2008 (Docket No. 278266), lv den 482 Mich 1070 (2008). In that case, the decedent executed a will on April 27, 1990, while married to the appellant-stepchildren's mother. The will left everything to the spouse if she survived the decedent. The will further provided that if the spouse predeceased the decedent, the stepchildren would have "the exclusive privilege of

purchasing my farm[5] and any and all farming tools and equipment for the price of double the state equalized value on [sic] said farm." *Id*. at 1-2. The decedent did not amend or revoke the will after his 2001 divorce from the children's mother or prior to his death on April 10, 2006. *Id*. at 1. The probate court entered an order determining the decedent's heirs and/or devisees and finding that the will was subject to MCL 700.2807 and revoked all dispositive portions of the will with regard to the stepchildren. *Id*. at 2.

In *In re Monahan Estate*, the second unpublished per curiam opinion of the Court of Appeals, issued November 20, 2007 (Docket No. 271408), the decedent executed his will on September 5, 1980, while married to his spouse, who had two children from a previous marriage. *Id*. at 1. The will bequeathed the remainder of the decedent's estate to his then spouse but only if she survived him by 30 days. If she did not survive him by 30 days, the will had a specific provision addressing disposition of the estate to the surviving step-children: "I give all of the remainder of my estate in equal shares to my wife's children or to their descendants by right of representation. I intentionally make no bequest to my children as set forth in Article I, Section 2." Article I, Section 2, stated: "My children from a previous marriage, now living are Judith Lynn Monahan, Richard Bruce Monahan, Jr., and Alice Kaye Monahan." *Id*. at 2. The decedent divorced in 1999. *Id*. The decedent's relationship with the stepchildren remained strong after the divorce. *Id*. The decedent died on July 2, 2004. *Id*. at 3. Judith Monahan petitioned the trial court to identify the decedent's heirs and, in making this request, she claimed that pursuant to MCL 700.2807(1)(a)(*i*), the devise in the will to Evelyn, to Evelyn's children, and to her children's descendants was revoked by the subsequent divorce of the decedent and Evelyn. *Id*. The probate court noted that the decedent's will was drafted when the RPC was in effect. *Id*. The probate court explained that the RPC required that a spouse named in a testator's will be considered predeceased for purposes of probating the will if the marriage between the testator and his spouse ended in divorce or annulment after implementation of the will, but it did not discuss the effect of divorce or annulment on bequests made to that spouse's children. *Id*. The court concluded that although EPIC required the revocation of appointments and dispositions made in a will to a spouse's children upon the divorce or annulment of the marriage between a testator and his spouse, it also included an interest of justice exception in which the trial court retained the discretion to instead apply the RPC in a particular circumstance. *Id*. After considering both the decedent's will and extrinsic evidence, the court concluded that the decedent viewed Evelyn's children as his family and intended to leave them the remainder of his estate after his death, even though he and Evelyn had divorced. *Id*. The court found that the RPC was still applicable to the decedent's 1980 will and divided the remainder of decedent's estate between Evelyn's children. *Id*.

[5] The farm referenced in the will consisted of two parcels of real property with a state equalized value (as doubled according to the will) of $279,400 at the time of the decedent's death, but the appraised value of the farm was purportedly $729,725. *Id*. at 1-2.

The issue presented in the above cases, both of which involved a will that was executed under the RPC, and a decedent who died after EPIC was adopted, was whether EPIC governed the effect that the divorce would have on the subsequent distribution of the decedent's estate.[6]

This Court's analyses in *In re Fink Estate* and *In re Monahan Estate* are substantially similar and are instructive to this Court:

> The Legislature's express intent in enacting EPIC was, in part, to provide a series of rules for interpreting the provisions of a will to ensure that the distribution of a testator's estate would correspond to his wishes. See MCL 700.1201(b). Further, in both the RPC and EPIC, the Legislature assumed that a testator who provided for a spouse in his will and later divorced his spouse would not want his former spouse to receive any portion of his estate, even if he did not revise his will after the divorce, and it adopted legislation preventing a former spouse from receiving a distribution from the testator's estate absent an express provision in the testator's will to the contrary. See MCL 700.124(2); MCL 700.2807(1)(a)(*i*). However, EPIC reflects an expanded policy determination. By also precluding the relatives of a testator's former spouse from taking under the testator's will (in the absence of an express provision in the will to the contrary), the Legislature obviously assumed that a testator who executed his will and subsequently divorced his spouse would not want his former spouse's relatives to receive distributions from his estate. See MCL 700.2807(1)(a)(*i*).
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> EPIC also retains the RPC provision permitting an alternate disposition of property "as provided by the express terms of a governing instrument." See MCL 700.2807(1). This means that if a testator decides that he wants his spouse's children or other relatives to receive distributions from his estate even if he were to divorce his spouse, he can include an express provision in his will specifying this intent. Presumably, a testator executing his will after EPIC took effect on April 1, 2000, would be aware of the default provisions of MCL 700.2807. *Adams Outdoor Advertising v East Lansing*, 463 Mich 17, 27; 614 NW2d 634 (2000).
>
> EPIC, which took effect on April 1, 2000 (MCL 700.8101[1]), "applies to a governing instrument executed by a decedent dying after that date." MCL 700.8101(2)(a). However, MCL 700.8101(2)(e) provides the following caveat: "A rule of construction or presumption provided in this act applies to a governing instrument executed before that date unless there is a clear indication of a contrary intent." Although decedent died several years after EPIC took effect, he executed his will and divorced Della before it took effect. Hence, the RPC governed the effect that his divorce would have on the subsequent distribution of his estate.

[6] The issue arose because, under EPIC, in the absence of express terms to the contrary in the governing instrument, when a testator who has executed a will subsequently divorces his spouse, the divorce revokes any disposition or appointment to either the former spouse or the former spouse's relatives.

> If MCL 700.8101(2)(a) alone governed, and if MCL 700.8101(2)(e) was not taken into consideration, EPIC would control the interpretation of decedent's will. Appellants are Della's children and are not related to decedent by blood, adoption, or affinity; therefore, they would be considered "relatives of the divorced individual's former spouse" pursuant to MCL 700.2806(e). Under MCL 700.2807(1)(a)(*i*), the right of appellants to take pursuant to the terms of decedent's will would be revoked.
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> However, MCL 700.2807(1)(a)(*i*) does not govern the revocation of provisions in decedent's will concerning the significantly discounted distribution of the farm, farming tools, and equipment, to Della's children. Because decedent's will was executed before EPIC was implemented in 2000, the rules of construction or presumption in EPIC apply to decedent's will "unless there is a clear indication of a contrary intent." MCL 700.8101(2)(e). In this instance, there existed a clear indication of decedent's contrary intent. Particularly, extrinsic evidence indicated that decedent wanted appellants to have the opportunity to acquire his farm when he died, irrespective of whether he was married to Della at the time.
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> Appellees' position presumes that MCL 700.2807(1) is a substantive rule of law. But the statute does not create, define, or regulate the rights of parties to recover from a testator's estate. Rather, the governing instrument executed by the testator governs the rights of parties to receive distributions from the testator's estate and the circumstances under which they may receive these distributions. We therefore conclude that MCL 700.2807(1) is a rule of construction. As such, the exception set forth in MCL 700.8101(2)(e) applies, and the trial court erred in its application of MCL 700.2807(1) when interpreting and implementing the provision of decedent's will at issue in this case.
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> Appellees argue that the trial court was precluded from considering extrinsic evidence to determine if "a clear indication of a contrary intent" exists. However, MCL 700.8101(2)(e) does not require that a showing of contrary intent must be found in the governing document for the exception to apply. Nothing in MCL 700.8101 prevents a trial court from considering extrinsic evidence to determine whether a testator who executed his will before EPIC was implemented had an intent contrary to the presumption contained in EPIC. [*In re Fink Estate*, unpub op at 4-5; see also *In re Monahan Estate*, unpub op at 6.]

This Court concluded that a latent ambiguity developed when MCL 700.2807 took effect. This Court said:

> Under the RPC, Della would have been treated as predeceased when she and decedent divorced and, as a result, appellants would have been afforded the opportunity to acquire the farm, along with the farming tools and equipment, pursuant to the terms of the will. Decedent did not include any provisions in the will indicating that his intent regarding the applicability of this provision to appellants in the event of his and Della's divorce was different from the default provisions set forth in the RPC. In other words, he did not indicate he did not want

> appellants to have the opportunity to acquire the farm after his death if he and Della were divorced when he died.
>
> However, a latent ambiguity developed when MCL 700.2807 took effect. Although decedent's will was unambiguous on its face, extrinsic facts (decedent's divorce and the implementation of EPIC) created an ambiguity in the document. These circumstances, when considered in their totality, indicate that decedent would have had one of two possible intents as to whether appellants would still receive the opportunity to acquire the farm, tools, and equipment if he and Della divorced. Decedent could have intended that, consistent with the provisions of the RPC in effect at the time he executed his will, appellants were to have opportunity to acquire the real and personal property upon his death despite his divorce from Della. Alternatively, he could have simply wanted the provisions of the probate code in effect at the time of his death to govern whether appellants would inherit that part of his estate. Accordingly, a latent ambiguity in decedent's will existed, and the trial court improperly failed to consider extrinsic evidence to resolve this ambiguity and to determine decedent's intent at the time he executed the will. [*In re Fink Estate*, unpub op at 5-6; see also *In re Monahan Estate*, unpub op at 7.]

In *In re Fink Estate*, unpub op at 5-6, this Court concluded that the extrinsic evidence "clarified the latent ambiguity in decedent's will and indicated that, consistent with the provisions of the RPC, decedent wanted appellants to have the opportunity to acquire the farm upon his death." In *In re Monahan Estate*, unpub op at 8, this Court concluded that the extrinsic evidence "clarifies the latent ambiguity in decedent's will and indicates that, consistent with the provisions of the RPC, he wanted Evelyn's children to receive the remainder of his estate after his death."

Adopting this analysis, the appellant is not entitled to a distribution from the estate. The will was executed after the effective date of EPIC and, therefore, MCL 700.8101(2)(E) was not applicable. There is no question that appellant was not related by blood or adoption in this case. She asks this to find that she was related by affinity. We cannot do so.

Specifically, appellant asserts that by using the word "affinity" in MCL 700.2806(e), the Legislature contemplated that a relative of the divorced individual's former spouse may continue to be "related" to the divorced individual after the divorce. She argues because she maintained a close, loving, father-daughter relationship with the decedent she is outside of the category of persons labeled "relatives" of the divorced individual's former spouse whose putative bequests are revoked pursuant to MCL 700.2806(e). Appellant relies primarily on the majority opinion in *Patmon v Nationwide Mutual Fire Ins Co*, another unpublished per curiam opinion of the Court of Appeals, issued December 23, 2014 (Docket No. 318307), concerning first-party no-fault insurance. The insurance policy at issue in *Patmon* defined "relative," in part, as "one who regularly lives in your household and who is related to you by blood, marriage, or adoption (including a ward or foster child)." *Id.* at 1. The insurance company did not dispute that if the child's mother were still alive, the child would be "related by marriage" to her stepfather. This Court said that the insurance policy, standing alone, offered no guidance in determining whether the death of the biological parent terminated the "relation . . . by marriage" between the stepchild and the surviving stepparent, and that the Court's task was to discern the meaning of the term

"related . . . by marriage" in that context. *Id*. at 3-4. This Court engaged in an analysis of foreign authority, primarily in the context of insurance policies, before opining as follows:

> The weight of this authority persuades us that the common understanding of the term "related by marriage" can encompass a stepparent relationship even absent the biological parent. Heeding [the] admonition that we must place the words in context before interpreting them further convinces us that the Nationwide policy affords coverage to a stepchild who continues to reside with a stepparent, even after the death of the stepparent's spouse. [*Id*. 6-7.]

The dissenting judge in *Patmon* disagreed that a stepchild is related to a stepparent after a spouse's death terminated the marriage. *Patmon* (O'CONNELL, J., dissenting), unpub op at 1. The dissenting judge opined:

> Intermediate appellate courts have no authority to change the law. Principles of stare decisis require us to reach the same result in a case that presents substantially similar issues as presented in a case that another panel of this Court decided. MCR 7.215(C)(2); *WA Foote Me. Hosp v City of Jackson*, 262 Mich App 333, 341; 686 NW2d 9 (2004). No matter how dire the circumstances, or how deserving the cause, we are not allowed to side-step the law.
>
> Persons are related by affinity when they are members of a family that is unified by a marriage. *People v Armstrong*, 212 Mich App 121, 128; 536 NW2d 789 (1995). A relationship by affinity includes a step-relationship created by the remarriage of a parent. *Id*. at 122, 128. However, the law in Michigan is clear: a marriage terminates on death of a spouse. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). The surviving spouse is no longer related to the other spouse's children. See *In re Combs Estate*, 257 Mich App 622, 625; 669 NW2d 313 (2003).
>
> Sometimes, this rule leads to an apparently unfair result. For instance, in Combs, the step-children were not entitled to any proceeds from a wrongful death action involving their stepmother because their father passed away several years earlier. *Id*. at 623, 625. But this is the law in Michigan, and we are not free to avoid it.
>
> In this case, Patmon is not entitled to recover under the language of the policy because she is not related to Jordan by blood, affinity, or marriage. While a former step-child may remain close and still maintain an emotional relationship with the former step-parent, at law, they are no longer related. The "why" is uncomplicated—marriage terminates on divorce or the death of a spouse. The legal relationship formed as a result of that marriage does not survive the spouse's death. [*Id*. at 1-2.]

We first note that EPIC is a very subject matter specific statute and that even if "affinity" under no fault law would include her as a relative of the testator, such a definition would not apply to this case. However, even if it did, she cannot prevail. Appellant does not dispute that the

definition of affinity in our courts has developed over time, but that the definition has ultimately returned to that first established in *Bliss v Tyler*, 149 Mich 601; 113 NW 317 (1907). See *People v Zajaczkowki*, 493 Mich 6, 13-14; 825 NW2d 554 (2012) (quoting the *Bliss* definition of affinity); *Lewis v Farmers Ins Exch*, 315 Mich App 202, 214-215; 888 NW2d 916 (2016) (quoting the *Bliss* definition of affinity). In *Bliss*, the Court defined "affinity" in the context of a case involving judicial disqualification as:

> the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other, and the degrees of affinity are computed in the same way as those of consanguinity or kindred. A husband is related, by affinity, to all the blood relatives of his wife, and the wife is related, by affinity, to all blood relatives of the husband. [Id. at 608.]

In other words, when a couple marries, each spouse becomes related by affinity to the other spouse's blood relatives by the same degree.

Although this Court in *In Re Fink Estate* and *In re Monahan Estate* was not tasked with defining the term "affinity" in the context of MCL 700.2806 and MCL 700.2807, this Court's pronouncement that a testator's ex-spouse's children are not related to the testator by blood, adoption, or affinity and are considered "relatives of the divorced individual's former spouse" pursuant to MCL 700.2806(e) is both instructive and consistent with the definition of affinity in *Bliss*. Moreover, recently this Court, in holding that the relationship of two adopted children by a single mother did not arise from a marriage and so was not a relationship by affinity, stated that "affinity has always been understood so as to exist via a marriage, and we are not aware of any published case holding to the contrary." *People v Moss*, 333 Mich App 515, 526; 963 NW2d 390

(2020),[7] oral argument ordered on the application ___ Mich ___ (2021);[8] slip op at 6. Indeed, in *Shippee v Shippee's Estate*, 255 Mich 35, 37; 237 NW 37 (1931), the Court explored the relationship between Mary Shippee and the plaintiff, who was the widow of Mary's son. The Court addressed whether a relation by affinity survived the death of the plaintiff's husband. The Court said that "[if] there was living issue of the marriage, then the relation by affinity survived the death of plaintiff's husband, for in such event the mother-in-law was the grandmother of such issue. If there was no issue, then the affinity ended at the death of the connecting spouse." *Id.* at 37. The Court said that ample authority existed for the following: " 'Death of the spouse terminates the relationship by affinity; if, however the marriage has resulted in issue who are still living, the relationship by affinity continues.' " *Id.*

Here, appellant and the decedent were not related by marriage after the decedent and Sally divorced. Appellant is a blood relative of the divorced individual's former spouse and, after the

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[7] This Court originally denied the defendant's application for leave to appeal his conviction following his plea of no contest to third-degree criminal sexual conduct under MCL 750.520d(1)(d) (related by blood or affinity and sexual penetration occurs) against his adoptive sister. *Id.*; slip op at 1. The Supreme Court remanded the case to this Court for consideration as on leave granted and directed this Court to

> specifically address whether a family relation that arises from a legal adoption, see MCL 710.60(2) (". . . After entry of the order of adoption, there is no distinction between the rights and duties of natural progeny and adopted persons ...") (1) is effectively a "blood" relation, as that term is used in MCL 750.520b – MCL 750.520e; or (2) is a relation by "affinity," as that term is used in MCL 750.520b – MCL 750.520e, see *Bliss v. Caille Bros Co*, 149 Mich. 601, 608, 113 N.W. 317 (1907); *People v. Armstrong*, 212 Mich. App. 121, 536 N.W.2d 789 (1995); *People v. Denmark*, 74 Mich. App. 402, 254 N.W.2d 61 (1977). [*People v Moss*, 503 Mich 1009, 1009 (2019).]

This Court concluded that the defendant and the complainant were effectively related by blood and that an adequate factual basis existed for the defendant's no-contest plea. *Moss*, ___ Mich App at ___; slip op at 2. This Court noted that given its holding, it was not necessary to decide whether a relationship by affinity also existed. *Id.* at ___; slip op at 5. Considering the Supreme Court's order, however, this Court intentionally addressed the issue. *Id.* at ___; slip op at 5. Even though it was not decisive of the controversy, it was certainly germane to the controversy and, therefore, not dictum. See *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007), lv den 480 Mich 1044 (008); *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001).

[8] In the order granting oral argument on the application, the Supreme Court directed the defendant-appellant to "file a supplemental brief addressing whether the Court of Appeals erred in concluding on remand that the defendant and the complainant are effectively related by blood for purposes of MCL 750.520d(1)(d), such that there was an adequate factual basis for the defendant's no-contest plea." *Moss*, ___ Mich ___.

divorce, is not related to the divorced individual because the affinal relationship no longer existed. Accordingly, appellant's disposition was revoked by the divorce. See MCL 700.2807(1)(a)(*i*).

Appellant contends that MCL 700.2806(e) expressly contemplates that a person may continue to be related to the divorced individual by affinity after the divorce and that "[t]his alone indicates that a divorce does not always destroy a relationship by affinity" She asserts that "[t]o interpret the statute otherwise would render part of the statute nugatory." We disagree.

If the decedent and Sally had a child, the child would be a blood relative of both the decedent and Sally. If that child married, the child's spouse would be related to Sally (the divorced individual's former spouse) by affinity. The child's spouse would also be related after the divorce to the decedent (the divorced individual) by affinity. The child's spouse would not be a "relative of the divorced individual's former spouse" under MCL 700.2806(e) because the child's spouse would be related to the divorced individual's former spouse by affinity and, after the divorce, would be related to the divorced individual by affinity. A disposition to the child's spouse would not be revoked under MCL 700.2807(1)(a)(*i*).

Thus, the probate court properly determined that the decedent's disposition to appellant was revoked under MCL 700.2807(1)(a)(*i*), because appellant is a relative of the divorced individual's former spouse.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto