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REVOCATION OF WILL PROVISIONS BY DIVORCE

*In re Estate of Bloomer*¹

Before enactment of Missouri Revised Statutes section 474.420,² divorce did not revoke will provisions in favor of a former spouse. The law was harsh. It was applied even when the divorce included a final settlement of all property rights of the testator vis-a-vis his spouse.³ Recognizing that the effect of the common law was contrary to the intent of most testators, the legislature in 1956 enacted section 474.420, which provides that “[i]f after making a will the testator is divorced, all provisions in the will in favor of the testator’s spouse so divorced are thereby revoked but the effect of the revocation shall be the same as if the divorced spouse had died at the time of the divorce.”⁴ The section further provides that “[w]ith this exception, no written will, nor any part thereof, can be revoked by any change in circumstances or condition of the testator.”⁵ Though few cases have been decided under the statute,⁶ the Missouri Supreme Court has interpreted

1. 620 S.W.2d 365 (Mo. en banc 1981).

2. (1978).

3. See *Robertson v. Jones*, 345 Mo. 828, 833, 136 S.W.2d 278, 280 (1940); Fratcher, *Trusts and Succession in Missouri*, 30 MO. L. REV. 82, 89 (1965).

4. MO. REV. STAT. § 474.420 (1978). Accord *First Church of Christ, Scientist v. Watson*, 286 Ala. 270, 273, 239 So. 2d 194, 196 (1970); *Steele v. Chase*, 151 Ind. App. 600, 606, 281 N.E.2d 137, 140 (1972); *Russell v. Estate of Russell*, 216 Kan. 730, 733, 534 P.2d 261, 264-65 (1975); *Calloway v. Gasser*, 558 S.W.2d 571, 576 (Tex. Civ. App. 1977); UNIF. PROBATE CODE § 2-508 (1975). But see *In re Will of Lampshire*, 57 Misc. 2d 332, 334, 292 N.Y.S.2d 578, 580 (Sur. Ct. 1968); *Davis v. Davis*, 51 Ohio Op. 2d 388, 392, 258 N.E.2d 277, 282 (C.P. 1979); *Volkmer v. Chase*, 354 S.W.2d 611, 615 (Tex. Civ. App. 1962); *In re Estate of McLaughlin*, 11 Wash. App. 320, 323, 523 P.2d 437, 438 (1974). See generally Annot., 74 A.L.R.3d 1108 (1976).

5. MO. REV. STAT. § 474.420 (1978).

6. See *In re Estate of Bloomer*, 620 S.W.2d 365 (Mo. en banc 1981) (provisions in will executed prior to marriage of testator are subject to revocation); *Rookstool v. Neaf*, 377 S.W.2d 402 (Mo. 1964) (will executed and divorce granted prior to enactment; provisions favoring former spouse were revoked); *Crist v. Nesbit*, 352 S.W.2d 53 (Mo. App., K.C. 1961) (statute does not apply in situations where no divorce granted). The section was also considered in *In re Estate of Bloomer*, 528 S.W.2d 784 (Mo. App., K.C. 1975), where the court held that issues concerning § 474.420 are properly raised at the distribution hearing rather than during the will contest proceeding. *Id.* at 786-87. This holding is probably based on *McCarthy v. Fidelity Nat'l Bank & Trust Co.*, 325 Mo. 727, 735, 30 S.W.2d 19, 21 (1930), in which the court held that under MO. REV. STAT. § 525 (1919) (current version at *id.* § 473.083 (Supp. 1982)), a will must fall as a whole. Only the validity of the will as a testamentary document, not the validity of an individual devise, is at issue in a

this language as unambiguous and has therefore found no reason to examine either the legislative intent behind the statute or its practical effect.⁷ The most recent decision involving section 474.420, *In re Estate of Bloomer*,⁸ is the first to directly construe its scope and illustrates the weakness of this approach. This Note will examine the holding in *Bloomer* and its significance for issues arising under this statute in the future.

The testator, Joseph Bloomer, executed a will in 1952, leaving his entire estate to Ruth Hays.⁹ Joseph and Ruth were married shortly thereafter. Five months later they entered into a property settlement, and they were divorced in 1954. Following Joseph's death in 1969, Ruth was appointed administratrix of his estate, the will was admitted to probate, and letters testamentary were issued.¹⁰ In the subsequent proceeding for settlement and distribution of the estate, the trial court approved the final settlement and proposed order of distribution, which recognized Ruth as the sole beneficiary under the will. The Missouri Court of Appeals for the Western District affirmed, but the case was transferred to the Missouri Supreme Court to be heard as an original appeal.¹¹

The supreme court was faced with the question whether section 474.420, which became effective after the divorce, should apply to revoke the provisions favoring Ruth. While stipulating to the facts, Ruth argued that the section did not apply to her because Joseph executed the will prior

will contest proceeding. 325 Mo. at 733, 30 S.W.2d at 22. It should be noted, however, that MO. REV. STAT. § 473.081 (Supp. 1982), which became effective after the case was decided, clearly indicates that part of a will may be admitted to probate while another part is denied probate. This statutory amendment gives force to the argument that partial revocation ought to be raised in the will contest proceeding. If this is, in fact, the statute's effect, the issue of partial revocation would have to be raised within six months after the first publication of notice of letters testamentary under *id.* § 473.033 or it is precluded.

7. In *Rookstool v. Neaf*, 377 S.W.2d 402 (Mo. 1964), the leading case on § 474.420, the court dismissed a claim that the statute should not apply retroactively without discussing the meaning of the statute or the purpose of the legislature. *Id.* at 409 (citing *In re Ziegner's Estate*, 146 Wash. 537, 264 P. 12 (1928)).

8. 620 S.W.2d 365 (Mo. en banc 1981).

9. *Id.* at 366.

10. *In re Estate of Bloomer*, 528 S.W.2d 784, 786 (Mo. App., K.C. 1975). In a petition for removal, Joseph's heirs alleged that Ruth was not legally entitled to act as administratrix of the estate. They charged that she had wrongfully procured the appointment by stating that she was the sole beneficiary under the will when actually she had no interest under the will because of her divorce. The petition was denied by the Adair County Circuit Court, and that decision was affirmed on appeal. *Id.* In an action for removal, the issues are limited to the representative's right to sue as administratrix of the estate. The court stated that a finding that the administratrix had no interest as a beneficiary went beyond the issues presented by the petition. *Id.* at 786-87. See generally Annot., 34 A.L.R.2d 876 (1954) (effect of divorce on former spouse's right to administer estate).

11. The transfer was made under MO. CONST. art. V, § 9 (1976).

to the marriage.¹² Examining the "straight-forward words of the statute," the court, in a 4-3 decision, rejected Ruth's contention and held that all provisions favoring her were revoked by operation of law.¹³ While the court's decision is sound, the majority's approach to the interpretation of section 474.420 may prove inadequate in analyzing questions that arise in the future.

To evaluate the decision, it is necessary to examine the background of the statute. Section 474.420 is a deviation from the common law which, because there were few divorces in early England, did not provide for revocation of will provisions upon the divorce of the testator.¹⁴ The doctrine that divorce operates to revoke a will has been largely a development of American law. A number of jurisdictions, by statute or decision, provide that divorce revokes a will in whole or part.¹⁵ The rationale generally as-

12. 620 S.W.2d at 367. Ruth argued for a distinction between wills executed before marriage, like Joseph's, and those executed during marriage.

13. *Id.* at 366. The court noted that the statute operated to impose "constructive death" on Ruth with regard to the will provisions in her favor. *Id.* at 367. The *Bloomer* anti-lapse statute, MO. REV. STAT. § 474.460 (Supp. 1982), which is limited to devises to relatives, did not prevent the lapse of the devise because a spouse is not a "relative" under that section. 620 S.W.2d at 367.

14. T. ATKINSON, HANDBOOK OF THE LAW OF WILLS 431 (2d ed. 1953).

15. Even in the absence of a statute explicitly providing for revocation, the majority rule is that provisions in a previously executed will are revoked by a divorce coupled with a property settlement. *See, e.g.*, *Capriotti v. Millsaps*, 123 Ariz. App. 281, 285, 599 P.2d 237, 241 (1979); *Caswell v. Kent*, 158 Me. 493, 495, 186 A.2d 581, 582 (1962); *Donaldson v. Hall*, 106 Minn. 502, 509, 119 N.W. 219, 221 (1909); *In re Estate of Bartlett*, 108 Neb. 691, 692, 190 N.W. 869, 869 (1922); *Yunker v. Johnson*, 160 Ohio St. 409, 411-12, 116 N.E.2d 715, 717 (1954). The minority rule is that will provisions in favor of a former spouse are not revoked by a divorce, even when accompanied by a property settlement. *See, e.g.*, *Card v. Alexander*, 48 Conn. 492, 504 (1881); *In re Estate of Mercure*, 391 Mich. 442, 453, 216 N.W.2d 914, 919 (1974); *In re Blanchard's Estate*, 391 Mich. 644, 651-52, 218 N.W.2d 37, 40 (1974).

A number of states have statutes providing for revocation by divorce. *See, e.g.*, ALA. CODE § 43-1-8 (1975), *construed in* *Jeffries v. Boyd*, 269 Ala. 177, 179, 112 So. 2d 210, 211 (1959); ARK. STAT. ANN. § 60-407 (Supp. 1982), *construed in* *Mosely v. Mosely*, 217 Ark. 536, 538, 231 S.W.2d 99, 100 (1950); FLA. STAT. ANN. § 732.507 (West 1975), *construed in* *Bauer v. Reese*, 161 So. 2d 678, 679-80 (Fla. Dist. Ct. App. 1964); IND. CODE ANN. § 29-1-5-8 (Burns 1972), *construed in* *Steele v. Chase*, 151 Ind. App. 600, 605, 281 N.E.2d 137, 138 (1960); MD. EST. & TRUSTS CODE ANN. § 4-105 (1974), *construed in* *Webster v. Larmore*, 268 Md. 153, 169, 299 A.2d 814, 822 (1973); MO. REV. STAT. § 474.420 (1978), *construed in* *Crist v. Nesbit*, 352 S.W.2d 53, 57 (Mo. App., K.C. 1961); N.Y. EST. POWERS & TRUSTS LAW § 5-1.4 (McKinney 1981), *construed in* *In re Estate of Lampshire*, 57 Misc. 2d 332, 333, 292 N.Y.S.2d 578, 579 (Sur. Ct. 1968); N.C. GEN. STAT. § 31-5.4 (Supp. 1979), *construed in* *Ivery v. Ivery*, 258 N.C. 721, 724, 129 S.E.2d 457, 459 (1963); TEX. PROB. CODE ANN. § 69 (Vernon 1980), *construed in* *Grudziecki v. Starr*, 351 S.W.2d 381, 382

serted is that revoking provisions in favor of the former spouse implements the probable intent of the testator by operation of law without requiring him to go to the time and expense of making a new will.¹⁶ Before the enactment of section 474.420, Missouri followed the common law.¹⁷ Statutory revocation could be effected only in certain specific situations¹⁸ and the courts refused to adopt an implied revocation doctrine concerning divorce.¹⁹ Consequently, divorce—whether or not accompanied by a property settlement—did not revoke a will in Missouri.²⁰ Section 474.420

(Tex. Civ. App. 1962); VA. CODE § 64.1-59 (1950), *construed in* Papen v. Papen, 216 Va. 879, 880, 224 S.E.2d 153, 153 (1976). *See generally* Annot., 71 A.L.R.3d 1297 (1976) (divorce or annulment as affecting will).

Treatment of the disposition of the revoked devise differs in different jurisdictions. The Uniform Probate Code revokes only those provisions in favor of the former spouse. UNIF. PROBATE CODE § 2-508 (1975). The Missouri statute is in accord. MO. REV. STAT. § 474.420 (1978). *See also* ALA. CODE § 43-1-8 (1975); ARK. STAT. ANN. § 60-407 (Supp. 1982); IND. CODE ANN. § 29-1-5-8 (Burns 1972); N.Y. EST. POWERS & TRUSTS LAW § 5-1.4 (McKinney 1981); N.C. GEN. STAT. § 31-5.4 (Supp. 1979); OR. REV. STAT. § 112.315 (1981). Some statutes have been interpreted as revoking the entire will, not merely the provisions in favor of the former spouse. *See* FLA. STAT. ANN. § 732.507 (West 1975), *construed in* Bauer v. Reese, 161 So. 2d 678, 679 (Fla. Dist. Ct. App. 1963); GA. CODE ANN. § 53-2-76 (1981), *construed in* Friedman v. Cohen, 215 Ga. 859, 860, 114 S.E.2d 24, 26 (1960). *See generally* Annot., 71 A.L.R.3d 1297 (1976).

16. The court in *Caswell v. Kent*, 158 Me. 493, 186 A.2d 581 (1962), repeated the often-cited proposition:

[I]t is so rare and so unusual for a testator under these circumstances [divorce and division of property] to desire or intend that his divorced spouse should benefit further under his will, that it is not improper or unreasonable to require that such a testator make that extraordinary desire and intention manifest by a formal republication of his will or by the execution of a new will.

Id. at 496, 186 A.2d at 582-83. *See also* Luff v. Luff, 359 F.2d 235, 238 (D.C. Cir. 1966); Johnston v. Laird, 48 Wyo. 532, 544, 52 P.2d 1219, 1222 (1935).

17. *See* Robertson v. Jones, 345 Mo. 828, 833, 136 S.W.2d 278, 280 (1940).

18. For example, until the enactment of MO. REV. STAT. § 645 (1929), marriage revoked a woman's will. With the enactment of § 645, however, wills of both sexes were revoked by subsequent marriage and birth of issue who survived the testator's death. *See* Summers, *The Proposed Probate Code for Missouri*, 20 MO. L. REV. 123, 138 (1955).

19. Robertson v. Jones, 345 Mo. 828, 833, 136 S.W.2d 278, 280 (1940). "In our opinion the statutes have abrogated this common-law doctrine of implied revocation and are exclusive." *Id.* at 831, 136 S.W.2d at 279. *Accord In re* Estate of Comassi, 197 Cal. 1, 5, 40 P. 15, 16 (1895); Jones' Estate, 211 Pa. 364, 372, 60 A. 915, 918 (1905); *In re* Darrow's Estate, 164 Pa. Super. 25, 31, 63 A.2d 458, 460 (1949). *Contra* Luff v. Luff, 359 F.2d 235, 237 (D.C. Cir. 1966); Sheldon v. Sheldon, 66 N.J. Super. 590, 595, 169 A.2d 722, 725 (1961); Rankin v. McDearmon, 38 Tenn. App. 160, 167, 270 S.W.2d 660, 663 (1953).

20. Robertson v. Jones, 345 Mo. 828, 833, 136 S.W.2d 278, 280 (1940).

completely changed the law.

The *Bloomer* decision turned on the interpretation of that section, so the court had to utilize the principles of statutory construction. Although there are variations, a statute generally will be construed in one of two ways: strictly or liberally.²¹ The strict, or "plain meaning" approach, used by the majority in *Bloomer*,²² focuses exclusively on the words of a statute to ascertain its meaning.²³ In essence, the legislature is deemed to have meant exactly what the statute says. Only if the words are ambiguous will the legislature's purpose be examined.²⁴ Although this approach facilitates uniform application, it fails to recognize that words are imperfect and do not always convey the legislature's meaning.²⁵ More significantly, words that convey the intent of the legislature in one application may fail to do so in another.

Bloomer illustrates the weakness of this approach. First, although it was not an issue in the case, the court continued to apply section 474.420 retro-

21. 2A J. SUTHERLAND, STATUTES & STATUTORY CONSTRUCTION § 58.02 (4th ed. 1973).

22. 620 S.W.2d at 367.

23. The rule is based on the principle that if the language of a provision is plain, the sole function of the courts is to apply the statute as written. *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (citing *Lake County v. Rollins*, 130 U.S. 662, 670-71 (1888)); *United States v. Bank*, 234 U.S. 245, 258 (1913); *United States v. Lexington Mill & Elevator Co.*, 232 U.S. 399, 409-10 (1913); *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33 (1894). Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

24. The court in *Bloomer* stated the position succinctly:

When the language of a statute is unambiguous and conveys a plain and definite meaning, the courts have no business to look for or to impose another meaning If a statute is unambiguous, a court should regard it as meaning what it says since the legislature is presumed to have intended exactly what it states directly.

620 S.W.2d at 367 (quoting *State ex rel. Collins v. Donelson*, 557 S.W.2d 707, 710 (Mo. App., K.C. 1977); *Pedroli v. Missouri Pac. R.R.*, 524 S.W.2d 882, 884 (Mo. App., St. L. 1975)).

25. Professor Dickerson argues that relying on the literal interpretation of words, without examination of other factors, is "simple nonsense; to exclude consideration of context would be to ignore one of the basic principles of communication." R. DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 230 (1975). This approach "has sometimes been used to read ineptly expressed language out of its proper context, in violation of established principles of meaning and communication." *Id.* at 229. A better approach, he believes, is that taken in *Hutton v. Phillips*, 45 Del. 156, 160, 70 A.2d 15, 17 (1949), where the court considered that the plain meaning rule meant "little more than that we are convinced that virtually anyone competent to understand it . . . would attribute to the expression in its context a meaning such as the one we derive, . . . and would consider any different meaning, by comparison, strained, or far-fetched, or unusual, or unlikely."

actively to divorces granted before its enactment.²⁶ This application forces a testator to attempt to predict the substance and effect of a statutory change and may even subject the testator's attorney to potential liability for failure to notify his client of pertinent changes in the law.²⁷ At the time of the Bloomers' divorce, Missouri law was clear. A divorce accompanied by a property settlement did not revoke a will.²⁸ By allowing the date of death, rather than the date of divorce, to determine the applicability of the statute, the court in essence rewrote the testator's will. Even though the plain words of the statute direct this result, it is questionable whether this effect was even considered by the drafters.

Second, although the result reached in *Bloomer* was correct on its facts, the underlying reasoning is not sound. At issue in the case was whether a will executed before marriage fell within the scope of section 474.420. Based on a strict reading of the statute, the court held that it applied and that the devise was revoked.²⁹ The court found that "the language of the statute is plain and unambiguous and, therefore, requires no construction, liberal or otherwise."³⁰ The problem with this approach is that a court may fail to consider words in the context in which they were enacted and thus

26. The retroactive effect of § 474.420 was briefly discussed in *Rookstool v. Neaf*, 377 S.W.2d 402, 409 (Mo. 1964). In holding that the statute applied to divorces granted prior to enactment of the statute, the court reasoned that since wills are ambulatory, the provisions only come into effect upon the death of the testator. *Id.* (citing *Humphreys v. Welling*, 341 Mo. 1198, 1208, 11 S.W.2d 123, 128 (1937); *Starks v. Lincoln*, 316 Mo. 483, 488, 291 S.W. 132, 134 (1927)). *Accord* *Papen v. Papen*, 216 Va. 879, 882, 224 S.E.2d 153, 156 (1976).

27. The American Bar Association has indicated that there may be a duty to keep a client apprised of changes in the law that may affect his interests:

Many events transpire between the date of making the will and the death of the testator. The legal significance of such occurrences are often of serious consequence, of which the testator may not be aware, and so the importance of calling the attention of the testator thereto is manifest.

It is our opinion that where the lawyer has no reason to believe that he has been supplanted by another lawyer, it is not only his right, but *it might even be his duty to advise his client of any change of fact or law which might defeat the client's testamentary purpose as expressed in the will.*

ABA Comm. on Professional Ethics & Grievances, Formal Op. 210 (1941) (emphasis added). *Cf.* *Bancroft v. Indemnity Ins. Co.*, 203 F. Supp. 49, 53 (W.D. La. 1962) (accountant's insurer liable for additional taxes paid when clients relied on written opinion and accountant failed to notify clients of changes in law).

28. *Robertson v. Jones*, 345 Mo. 828, 833, 136 S.W.2d 278, 280 (1940).

29. 620 S.W.2d at 367.

30. *Id.* In dictum, the court noted that a divorced individual does not usually desire a bequest to a former spouse to remain in effect and that the statute was enacted to accomplish the desired outcome in most instances. *Id.* at 366. But the court did not consider the legislature's purpose when actually interpreting the statute.

arrive at undesirable results in particular cases.³¹

A better method of statutory interpretation is to look beyond the words of the statute to find its true meaning. This "liberal" method of interpretation³² analyzes both the legislative purpose and the actual words of a statute.³³ When the specific purpose of the legislature is not clearly evident, courts often ask four questions in an attempt to discover it: (1) What was the law before the statute? (2) What were the shortcomings of the prior law? (3) Why did the legislature enact a new statute? (4) What was the remedy chosen?³⁴ This approach, known as the "mischief rule," determines legislative purpose by comparing the old law to the new.

The *Bloomer* court could have reached the same result if it had examined section 474.420 under this analytical framework. Before the enactment of the statute, divorce did not revoke a testator's will even when there was a full property settlement between the parties. The law's shortcomings

31. See note 25 *supra*.

32. "[A] liberal construction is ordinarily one which makes a statute apply to more things or in more situations than would be the case under strict construction." 2A J. SUTHERLAND, *supra* note 21, § 58.02.

33. The dissent in *Bloomer* would have liberally construed the statute and would have held for Ruth because the will was executed prior to the marriage. 620 S.W.2d at 369 (Donnelly, C.J., dissenting). Chief Justice Donnelly believed that a "reasonable construction of § 474.420 is that it is intended to apply only to the revocation of a will made during a marriage." *Id.* (Donnelly, C.J., dissenting). The dissent quoted from an Ohio decision with similar facts:

Had the testator died before the marriage contemplated, the right of the plaintiff to the bequest can not be doubted, for the marriage was not a condition precedent to the legacy. Nor is the case different if, after marriage, she ceases to be his wife, for the legacy is not conditioned upon her survivorship as his widow. If, then, her right to the legacy does not depend upon the marriage, it can not be lost by the divorce, for *she can lose no more by the divorce than she gained by the marriage.*

Id. (Donnelly, C.J., dissenting) (quoting *Charlton v. Miller*, 27 Ohio St. 298, 304 (1875)) (emphasis added). The dissent reasoned that the statute merely "restored the *status quo* of being single persons enjoyed by the parties at the time the will was made"—at which point Ruth was the beneficiary. *Id.* (Donnelly, C.J., dissenting). This reasoning may have misread the legislature's purpose, since upon divorce a testator is as likely to intend revocation of a will executed in contemplation of marriage as one executed during marriage. The dissent never explained what it considered the legislature's purpose to be; it fell back on "plain meaning" language. "Had the legislature intended that a will, made at *any* time prior to the testator being divorced, would be revoked by a divorce, it could have said so." *Id.* (Donnelly, C.J., dissenting). A possible response is that if the legislature had meant that *only* wills made during marriage should be revoked by divorce, it could have said so.

34. This approach was formulated by Lord Coke in *Heydon's Case*, 3 Co. Rep. 72, 76 Eng. Rep. 637 (1584), and is now the principal modern approach to determining legislative purpose. C. NUTTING & S. ELLIOTT, *CASES & MATERIALS ON LEGISLATION* 289 (3d ed. 1964).

were obvious; it often caused a result contrary to the stated intent of the testator. The case law is exemplified by the 1940 decision in *Robertson v. Jones*,³⁵ in which the testator had married, executed a will, and then been divorced. The divorce was accompanied by a property settlement which provided that the testator's wife, in consideration of a substantial cash payment, would release all her rights in the testator's property.³⁶ The testator died six weeks later, without having revoked his will. The court allowed the wife to take under the will even though it recognized that the testator would not have intended that result.³⁷ The court reasoned that revocations by implication were not recognized in Missouri, and there was no statute to prevent the wife from taking under the will.³⁸

The court recognized the harshness of the rule but indicated that change would have to come from the legislature.³⁹ The legislature responded with section 474.420.⁴⁰ The provision directs revocation of the will by operation of law whenever a testator has been divorced. Significantly, it implies that the revocation is the result of a change in the testator's circumstances.⁴¹ The concern of the drafters appears to have been the change in the testator's sentiment toward the object of his devise that would accompany a divorce. Thus, section 474.420 implements by operation of law that which a testator probably would do given the time, money, and forethought.

An examination of the old and new law indicates that the legislature's purpose was to revoke will provisions in the event of divorce, which in most cases would coincide with the sentiments of the testator.⁴² Examining the issue presented in *Bloomer* in light of this purpose, it is evident that the will provisions in Ruth's favor should have been revoked regardless of when the will was executed. The court, however, by looking only at the words of the statute, risks extending the decisional law beyond the limits envisioned by the legislature. The problems of this approach can be seen in an examination of just two questions that may arise under section 474.420: (1) whether remarriage to the same spouse constitutes revival of the original will, and (2) what effect an annulment will have on a previously executed will.

Section 474.420 does not provide for the possibility that the testator

35. 345 Mo. 828, 136 S.W.2d 278 (1940).

36. *Id.* at 830, 136 S.W.2d at 278.

37. *Id.*

38. *Id.* at 832, 136 S.W.2d at 280.

39. *Id.* at 828, 136 S.W.2d at 278.

40. Section 474.420 was adapted from MODEL PROBATE CODE § 53 (1946). MO. REV. STAT. § 474.420 comment (1978). The Missouri statute was amended, however, to include a direction for the disposition of the revoked spousal provisions.

41. The statute provides that except for divorce, "no written will . . . can be revoked by *any change in the circumstances or conditions of the testator.*" *Id.* § 474.420 (emphasis added).

42. This is the interpretation offered by the court in *Bloomer*. 620 S.W.2d at 366.

and his former spouse will marry each other a second time.⁴³ Consequently, it is unclear how the court would treat this issue.⁴⁴ An indiscriminate application of the "plain and unambiguous" statute would automatically revoke provisions in favor of the spouse regardless of the fact that the parties had remarried before the testator's death. This would not only defeat the probable intent of the testator but may also be outside the scope of the statute as intended by the legislature.⁴⁵ In such a situation, the court would either have to retreat from the literal reading adopted in *Bloomer* or strictly adhere to the plain meaning rule, which would produce a result that neither the testator nor the legislature probably intended.

The section also does not provide for revocation of will provisions in the event of an annulment of the marriage.⁴⁶ The intent of the testator is probably the same whether the marriage is dissolved by divorce or annulment, and it is difficult to see why the legislature, if it considered the issue, would revoke the will in one case but not in the other. It is possible that a Missouri court, as a rule of construction, could carry out the statute's apparent purpose and treat an annulment as a divorce,⁴⁷ but a strict reading of the language might cause the court to hold that an annulment does not revoke will provisions in favor of the former spouse.

There are benefits in the court's approach in *Bloomer*. It helps ensure predictability in interpreting the gaps in section 474.420. A testator who is divorced is on notice that unless he affirmatively revives the instrument, a will executed in favor of a former spouse will be revoked upon his death by

43. The reason for this omission is unclear. It is possible that the provision was not considered by the legislature. Section 474.420 was adopted from MODEL PROBATE CODE § 53 (1946), which did not provide for this eventuality, and both were promulgated prior to the Uniform Probate Code, which provides that a devise revoked solely by reason of divorce is revived by the testator's remarriage to the former spouse. UNIF. PROBATE CODE § 2-508 (1975).

44. In *In re Estate of Guess*, 213 So. 2d 638, 640 (Fla. Dist. Ct. App. 1968), the court held that remarriage does not revive provisions that were revoked by a prior divorce. *Cf.* *Bauer v. Reese*, 161 So. 2d 678, 679 (Fla. Dist. Ct. App. 1964) (will revocation by divorce does not limit wife's intestate interest after remarriage to testator).

45. If, as the *Bloomer* court recognized, the legislature "wrote the statute to accomplish what was perceived to be the desired outcome in most divorces," 620 S.W.2d at 366, a holding that the revoked will was not revived—which would *not* be the desired outcome in most cases of remarriage—would be at variance with the legislative purpose.

46. As with omission of the remarriage question, *see* note 43 *supra*, the reason for this is unclear. The Uniform Probate Code provides for this contingency and revokes will provisions in favor of the putative or former spouse on either annulment or divorce. UNIF. PROBATE CODE § 2-508 (1975).

47. In *Ivery v. Ivery*, 258 N.C. 721, 129 S.E.2d 456 (1963), a statute, similar to § 474.420, was also silent as to whether an annulment revoked a will. The court held that the term "divorce" included annulment. *Id.* at 725, 129 S.E.2d at 460.

operation of law. But the decision is disturbing because the court indicates that the statute may be indiscriminately applied regardless of legislative purpose and practical effect. To the extent that the court must shift its approach to accommodate new issues that arise, it may lose the advantage of predictability. To the extent that it refuses to accommodate the probable intent of both the testator and the legislature, it may reach results that are difficult to justify. Balancing these two alternatives is difficult, and the court may have to re-examine the inflexible language of *Bloomer* in light of future cases.

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