Order

Michigan Supreme Court
Lansing, Michigan

August 11, 2023

Elizabeth T. Clement,
Chief Justice

163981-2

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

In re JOSEPH & SALLY GRABLICK TRUST.
_____

KATELYN BANASZAK,
Appellant,
v

SC: 163981
COA: 353951
Genesee PC: 19-213790-TV

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.
_____/

In re JOSEPH GRABLICK TRUST.
_____

KATELYN BANASZAK,
Appellant,
v

SC: 163982
COA: 353955
Genesee PC: 19-212796-TV

DOROTHY GRABLICK and JUDITH ALMASY,
Appellees,
and

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

On May 10, 2023, the Court heard oral argument on the application for leave to appeal the December 16, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

CLEMENT, C.J. (*concurring*).

I concur in the denial of leave to appeal because I believe that the decedent very easily could have clarified that he wanted petitioner to inherit under his will despite his divorce from petitioner's mother. I am also not convinced that the instant problem arises so frequently that it merits attention from our Court. See MCR 7.305(B)(3) (stating that an application for leave to appeal in our Court must show that "the issue involves a legal principle of major significance to the state's jurisprudence"). However, I tend to believe there is some merit in petitioner's arguments that in this context affinal relationships can continue beyond divorce if individuals choose to remain close.

Petitioner Katelyn Banaszak was eight years old when her mother married Joseph Grablick, the decedent. They were married for several years. During the marriage Grablick executed a will, which identified petitioner as his stepchild. He also executed a trust adoption agreement and created a joint revocable trust; the trust adoption agreement identified petitioner as the only living child of the settlors. The trust was to provide for Grablick's mother and sister. Eventually Grablick and petitioner's mother divorced, though petitioner maintains that she and Grablick remained close.

After Grablick died, petitioner was appointed personal representative of the estate, and she filed a petition in the trust case as well a petition for probate in the will case. She also requested an order determining heirs. The court entered a stipulated order in both cases noting that the only issue was how the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*.—specifically, MCL 700.2807(1)(a)(*i*) and (3)—affected petitioner's rights. Grablick's mother and sister moved for summary disposition under MCR 2.116(C)(10), which the court granted after concluding that EPIC had automatically revoked the dispositions to petitioner after the divorce. The Court of Appeals affirmed in a published opinion authored by Judge STEPHENS.

MCL 700.2807, which is part of EPIC, states that divorce revokes "a disposition . . . to a relative of the divorced individual's [i.e., the decedent's] former spouse." MCL 700.2807(1)(a)(*i*). MCL 700.2806(e) defines "[r]elative of the divorced individual's former spouse" as "an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce . . . , is not related to the divorced individual by blood, adoption, or affinity." Because petitioner is clearly not related to Grablick by blood or adoption, the question is whether she was related to him by affinity such that she is not considered a "relative of the divorced individual's former spouse" and the automatic revocation in MCL 700.2807(1)(a)(*i*) would not apply to her.

Whether petitioner was related to Grablick by affinity turns on the definition of "affinity" and, more precisely, how affinal relationships end. There are several cases providing guidance on those topics, but the general trend in Michigan, for better or worse, has been toward a uniform rule that affinal relationships arise from marriage and end with

the dissolution of a marriage unless issue of the marriage survive. *Bliss v Caille Bros Co*, 149 Mich 601, 608 (1907), defined "affinity" as "the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other . . . ." While *Bliss* noted that there was not always one uniform definition of affinity,[1] Michigan courts have largely adhered to that definition.[2]

As to the termination of affinal relationships, in *Shippee v Shippee's Estate*, 255 Mich 35 (1931), our Court explained that the dissolution of the marriage terminates affinity, except if there are living issue of the marriage. *Id*. at 37 (" '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.' "), quoting 2 CJ, p 379. However, to support that rule *Shippee* cited only Corpus Juris. While no case has squarely confronted *Shippee*'s rule, there are a few cases that, though they provide little explanation of their decision, may be read as providing for a continuing affinal relationship where *Shippee*'s rule would not. *Harris v Harris*, 106 Mich 246, 247-248 (1895) (concluding, despite the death of the plaintiff daughter-in-law's husband, that "[t]he evidence showed conclusively the existence of the family relation" between the daughter-in-law and father-in-law, with no mention of whether there was surviving issue); *Hilliker v Dowell*, 54 Mich App 249 (1974) (allowing stepchildren of the decedent to be contingent beneficiaries of the life insurance policy, which named "children" as beneficiaries, despite the decedent's divorce from their mother). Nevertheless, *Shippee* does provide a clear rule regarding when affinal relationships end.[3]

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[1] *Id*. at 607 ("The application of the maxim, especially as affecting marriage, divorce, and the legitimacy of children, gave rise to rules, the intricacy of which is proof of the amazing ingenuity of the churchmen. The rules varied with different periods."). See also *People v Armstrong*, 212 Mich App 121, 125 (1995) ("[T]he term 'affinity' is not capable of precise definition. Rather, at common law, whether someone was related to another by affinity depended upon the legal context presented."), citing *In re Bordeaux Estate*, 37 Wash 2d 561, 564 (1950).

[2] See *People v Zajaczkowski*, 493 Mich 6, 13-14 (2012); *Lewis v Farmers Ins Exch*, 315 Mich App 202, 211-212 (2016); *People v Denmark*, 74 Mich App 402, 408 (1977). Cf. *Armstrong*, 212 Mich App at 128 (determining that stepsiblings were related by affinity because they were "family members related by marriage").

[3] In the instant case the Court of Appeals particularly relied on two unpublished cases in determining that the tie of affinity between Grablick and petitioner had been destroyed: *In re Fink Estate*, unpublished opinion of the Court of Appeals, issued July 24, 2008 (Docket No. 278266), and *In re Monahan Estate*, unpublished opinion of the Court of Appeals, issued November 20, 2007 (Docket No. 271408). But those cases involved wills executed before EPIC. The issue in those cases involved the application of MCL 700.8101(2)(e), a

I am very skeptical, however, that adherence to *Shippee*'s rule in all legal contexts is in keeping with the common-law development of affinity. A broad view of the common law shows that the definition of "affinity" is dependent on context and, in the instant context, allows affinal relationships to continue beyond the dissolution of the marriage. As the Washington Supreme Court comprehensively explained in *In re Bordeaux Estate*, 37 Wash 2d 561 (1950), the concept of affinity was first used by the medieval church in the context of laws prohibiting incest. *Id*. at 565. Secular English law then extended the concept of affinity to jury selection in order to eliminate jurors too closely related to the sheriff or a party. *Id*. at 566. But confusingly, what qualified as "affinity" in one context did not always count as "affinity" in the other. *Id*. at 566-568.[4] It was in the jury-selection context that the rule that affinity would end upon dissolution of the marriage if there were no surviving issue appeared. *Id*. But importantly, that definition of affinity was rooted in that context and not a general rule.[5] American courts later began to apply that rule in both

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provision of EPIC that says that its rules of construction and presumptions apply to wills written before EPIC's effective date "unless there is a clear intention to the contrary." Both cases assumed that the stepchildren's dispositions would have been revoked under EPIC, and focused instead on whether extrinsic evidence could manifest a "clear intention" that EPIC's provisions should not apply. In short, neither *Fink* nor *Monahan* thoroughly considered the definition of "affinity," which is the key issue in this case. The Court of Appeals recognized that *Fink* and *Monahan* did not consider the definition of "affinity," but said nevertheless that the cases' "pronouncement that the children of a testator's ex-spouse are not related to the testator by blood, adoption, or affinity and are considered '[r]elative[s] 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*." *Grablick*, 339 Mich App at 553. But I am unpersuaded by that reasoning. Because both *Fink* and *Monahan* simply assumed that the stepchildren were relatives of the divorced individual's former spouse, *Fink* and *Monahan* failed to give the issue of affinity thorough reasoning, and they are therefore of very limited instructive value.

[4] For example, in England a party's stepfather could serve on a jury (so long as the party's mother had died and the marriage was thus dissolved) as there was no affinity; but in the same circumstance a party could not marry their stepfather because there was affinity. *Id*. at 567.

[5] *Id*. at 568 ("It is important to observe that the quoted statement, all-inclusive though it may appear when extracted from the context, was only intended to have reference to 'affinity,' as that term was defined in connection with the competence of a sheriff to summon a jury in a particular case. See, also, 1 Coke upon Littleton, § 157a, and note 6 thereto, wherein it was said that the same rule applied in determining grounds for disqualification of individual jurors. The limited scope of these comments has frequently been ignored by courts which have cited them as authority.").

incest and jury-selection contexts. *Id*. at 568-571. Notably, *Bordeaux* specifically refers to 2 CJ, p 379, which was our Court's sole citation for our rule in *Shippee*, as a rule developed in the context of incest and jury-selection cases but later wrongly restated as a general rule.[6]

However, the unity in American application of affinity was not long-lasting, and eventually there was a new line of cases analyzing workers' compensation acts and insurance policies issued by mutual-benefit societies. Those cases generally held that the " 'tie of affinity' " was not always broken upon the death of a spouse. *Id*. at 574. Instead, an affinal relationship between stepchild and stepparent could continue after divorce if "the mutual relationship of the two continued as it had before." *Id*. at 580, citing *Steele v Suwalski*, 75 F2d 885, 887-888 (CA 7, 1935). *Bordeaux* discusses several cases from various states as examples of this trend.[7] In the end, *Bordeaux* relied on that line of cases to conclude that the stepchildren had remained stepchildren of the decedent despite the death of their biological parent. *Id*. at 593.

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[6] *Id*. at 573 ("Thus the cases continued to make the broad general statement that affinity was terminated by the death of one of the parties to the marriage which had created it. In practice, however, the principle was only invoked in the jury and incest cases which had originally given rise to it. So applied, the doctrine did little harm, and, in fact, in most cases, undoubtedly promoted justice. But the continual restatement of the principle, often without any qualification, led to a gradual acceptance of the idea that it had an abstract validity, independent of the jury and incest cases . . . . A more influential comment appeared in 2 C.J. 379, also under the title 'Affinity,' to the following effect: '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.' ").

[7] *Id*. at 575-581 (discussing *Security Union Cas Co v Kelly*, 299 SW 286 (Tex Civ App, 1927); *American Gen Ins Co v Richardson*, 132 SW2d 161, 163 (Tex Civ App, 1939); *Simcoke v Grand Lodge of AOUW of Iowa*, 84 Iowa 383 (1892); *Spear v Robinson*, 29 Me 531 (1849); *Faxon v Grand Lodge Brotherhood of Locomotive Firemen & M E Rhea*, 87 Ill App 262 (1900); *McGaughey v Grand Lodge AOUW of State of Minn*, 148 Minn 136 (1921); *Hernandez v Supreme Forest Woodmen Circle*, 80 SW2d 346 (Tex Civ App, 1935); *Renner v Supreme Lodge of Bohemian Slavonian Benevolent Society*, 89 Wis 401 (1895); *Jones v Mangan*, 151 Wis 215 (1912); *Hummel v Supreme Conclave Improved Order Heptasophs*, 256 Pa 164 (1917); *Steele v Suwalski*, 75 F2d 885 (CA 7, 1935), and *Benefield v United States*, 58 F Supp 904 (SD Tex, 1945); and *Lewis v O'Hair*, 130 SW2d 379 (Tex Civ App, 1939)). See also *Podgorski v Jones*, 249 Ariz 482 (Ariz Ct App, 2020); *In re McGraff's Estate*, 83 NE2d 427, 429 (Ohio Prob, 1948) (holding that the stepchildren continued to be "stepchildren" and could take under the will despite their parent and stepparent, i.e., the testator, divorcing); 95 CJS, Wills, § 437 (same), citing *Podgorski*, 249 Ariz 482.

I believe *Bordeaux* has aged well, and I find its analysis of the history of affinity and the competing definitions of that term very compelling. Taking *Bordeaux*'s reasoning that there are different definitions of affinity—one that American courts have applied in incest and jury-selection cases, which terminates affinal relationships upon dissolution of the marriage except if there are surviving issue, and another in the workers' compensation and insurance context, which allows affinal relationships to continue in some cases despite dissolution of the marriage—all that is left is to decide which rule should apply in the instant case. The inheritance issue in this case is clearly more akin to the inheritance tax at issue in *Bordeaux* and the workers' compensation and insurance-policy line of cases, as opposed to the incest and jury-selection cases that apply the rule we cited in *Shippee*. The former types of cases, including the instant one, pertain to whether benefits may be conferred on the basis of affinal relationships, rather than involving restrictions or punishments as in the latter types of cases. As a result of that classification, it follows that in the instant context affinal relationships can continue beyond the dissolution of the marriage if the two individuals continue to maintain their prior affinal relationship.[8] That appears to have been the case here.[9]

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[8] Justice VIVIANO quotes the comment to § 2-804 of the Uniform Probate Code (the UPC), which provided the language for EPIC. That comment shows that the general intention of the drafters of the UPC was to revoke gifts to relatives of former spouses. UPC § 2-804 ("In several cases . . . the result of treating the former spouse as predeceasing the testator was that a gift in the governing instrument was triggered in favor of relatives of the former spouse who, after the divorce, were no longer relatives of the testator. . . . Given that, during divorce process or in the aftermath of the divorce, the former spouse's relatives are likely to side with the former spouse, breaking down or weakening any former ties that may previously have developed between the transferor and the former spouse's relatives, seldom would the transferor have favored such a result. This section, therefore, also revokes these gifts."). That intent might appear as inconsistent with a rule that would allow affinal relationships to continue past the dissolution of the marriage if the two individuals maintain their prior affinal relationship. However, I believe the two are consistent. In what I imagine would be the vast majority of cases, EPIC would revoke gifts to a former spouse's relatives. There would simply be a narrow exception for when the decedent continued a close, affinal relationship with their former spouse's relatives. Furthermore, as Justice VIVIANO states, comments are not binding. *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 507 Mich 272, 293 n 39 (2021), quoting *People v Comer*, 500 Mich 278, 298 n 48 (2017).

[9] In addition to the common-law history of affinity as recounted by *Bordeaux*, the statutory language here gives me pause. MCL 700.2806(e) sets out the general definition of "relative of the divorced individual's former spouse" as "an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity," but then goes on to except an individual "who, after the divorce . . . , is not related to the divorced individual by blood,

Despite the persuasiveness of *Bordeaux*, this Court has discretion to deny leave, MCR 7.305(H), and I see multiple reasons to do so here. As amici point out, there are practical concerns with departing from a hard-and-fast rule that affinity ends upon dissolution of a marriage that leaves no issue. It seems that the working assumption since EPIC became effective is that *Shippee*'s rule applies, and this rule has avoided the necessity of evidentiary hearings to determine whether individuals continued to maintain their affinal relationship despite the dissolution of the marriage that gave rise to that relationship. Additionally, it is very simple for testators to avoid the automatic revocation under EPIC should they wish to do so—they can clearly state in their will that they wish dispositions not to be automatically revoked upon divorce, or after a divorce they can amend their will to clarify their intent. See MCL 700.2807(1) (setting out the automatic revocation that results from divorce but stating that the revocation applies "[e]xcept as provided by the express terms of a governing instrument"). Indeed, I see no influx of cases challenging EPIC's automatic-revocation provisions, so it stands to reason that the controversial application of the revocation provision is a problem testators generally successfully avoid. Even if the rule from *Shippee* should not be applied in these cases when considering the common-law history of affinity, it offers the practical benefits of a clear, uniform rule and its pitfalls can easily be avoided. That undermines the significance of the issue for our state's jurisprudence in my opinion. MCR 7.305(B)(3). Therefore, though I find *Bordeaux*'s reading of the common-law development of affinity very compelling, I concur with the Court's denial of leave to appeal in this case.

WELCH, J., joins the statement of CLEMENT, C.J.

VIVIANO, J. (*concurring*).

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adoption, or affinity." If affinal relationships generally end automatically upon dissolution of the marriage, as *Shippee* states, whom exactly did the Legislature mean to except from automatic revocation? In other words, who would be related to the former spouse, but also related to the decedent via affinity? The Court of Appeals put forward the hypothetical situation that had the decedent and his former spouse had a child who married, that child's spouse would be related to both the former spouse and the decedent by affinity even after the divorce, and thus dispositions to that child-in-law would not be revoked. *Grablick*, 339 Mich App at 555. While that makes some sense, I am not wholly convinced by that explanation. In such a case, the child-in-law would be naturally thought of as a relative of the deceased via affinity, and it seems strange to me that there would be any thought that the child-in-law was only a relative of the former spouse who needs a special carveout because they are also related to the divorced individual, i.e., the decedent, by affinity. I have yet to hear a convincing explanation of how the exception would come into play that does not involve a very narrow circumstance.

I agree with this Court's decision to deny leave because the probate court and the Court of Appeals correctly determined that the dispositions to appellant were revoked under MCL 700.2807(1)(a)(*i*). In her separate statement, the Chief Justice provides an overview of the history of the common-law concept of affinity, ultimately concluding that its definition—and particularly relevant to this case, when an affinal relationship ends—depends on context.[10] I write separately to emphasize that the meaning of that term as used in the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, is a question of legislative intent.

As the Chief Justice explains, the term "affinity" was a legal term of art—i.e., it had acquired a technical meaning in the area of inheritance law in Michigan by the time EPIC was adopted in 1998. When defining a term of art, we must construe it "according to its peculiar and appropriate meaning."[11] In Michigan, affinity was defined as "the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other . . . ."[12] The circumstances in which we held that an affinal relationship survived the termination of the marriage were limited: " '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.' "[13]

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[10] See also *People v Armstrong*, 212 Mich App 121, 125 (1995) (noting that "at common law, whether someone was related to another by affinity depended upon the legal context presented"), citing *In re Bordeaux Estate*, 37 Wash 2d 561, 564 (1950). Because divorce is an intentional act to sever ties between two people, a relationship ending because of divorce is very different than a relationship ending because of death. Thus, while *In re Bordeaux Estate*, 37 Wash 2d at 565, provides a helpful overview of the history of affinity, the caselaw it discusses is not particularly helpful to answering the question in this case—whether a relationship by affinity survives divorce for the purposes of bequests or devises in will or trust.

[11] *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 563 (2016), citing MCL 8.3a.

[12] *Bliss v Caille Bros Co*, 149 Mich 601, 608 (1907). At the time EPIC was enacted, caselaw existed that established when a relationship by affinity terminated in the context of death, but not in the context of divorce.

[13] *Shippee v Shippee's Estate*, 255 Mich 35, 37 (1931), quoting 2 CJ, p 379. To be clear, our early caselaw also did not expressly hold that divorce always terminates a relationship by affinity. But given our definition of affinity in *Bliss*, an affinal relationship surviving termination of marriage would be the exception, not the rule. Cf. 41 Am Jur 2d, Husband and Wife (May 2023 update), § 4 ("Affinity relationships arise out of marriage and are always terminated by divorce. The relationship is also terminated by the death of a spouse unless live issue are born of the marriage and are still living.").

The amendment history of EPIC demonstrates that this definition of affinity was incorporated into EPIC. Prior to the adoption of EPIC, Michigan had incorporated some, but not all, of the provisions from the pre-1990 version of the Uniform Probate Code (the UPC), a uniform act drafted by the National Conference of Commissioners on Uniform State Laws.[14] MCL 700.124(2), which has since been repealed, incorporated § 2-508 of the pre-1990 UPC and treated a former spouse as if he or she had predeceased the testator. Thus, affinal relationships between the testator and relatives of the former spouse created by the marriage survived the divorce for probate and estate purposes. In 1990, a major rewrite of the UPC was published.[15] Among the changes, the content in § 2-508 was moved to § 2-804, and the language was revised to automatically revoke gifts to former spouses and relatives of former spouses instead of treating former spouses as predeceasing the testator.[16] The comment to § 2-804 specifically addressed the provision's effects on relatives of a former spouse:

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[14] See Lowe, *Introduction: EPIC—New Probate & Trust Legislation for the New Millennium*, 79 Mich B J 330 (2020).

[15] See generally Averill, *An Eclectic History and Analysis of the 1990 Uniform Probate Code*, 55 Alb L Rev 891, 893-900 (1992) (discussing the history of the UPC and the 1990 amendments).

[16] Section 2-804 states:

> (a) **[Definitions.]** In this section:
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> * * *
>
> (5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity and who, after the divorce or annulment, is not related to the divorced individual by application of the rules establishing parent-child relationships under [[Subpart] 2 of [Part] 1] or affinity.
>
> * * *
>
> (b) **[Revocation Upon Divorce.]** Except as provided by the express terms of a governing instrument, a court order, or a 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:

> **Revoking Benefits of the Former Spouse's Relatives.** In several cases, including Clymer v. Mayo, 473 N.E.2d 1084 (Mass. 1985), and Estate of Coffed, 387 N.E.2d 1209 (N.Y. 1979), *the result of treating the former spouse as predeceasing the testator was that a gift in the governing instrument was triggered in favor of relatives of the former spouse who, after the divorce, were no longer relatives of the testator*. In the Massachusetts case, the former spouse's nieces and nephews ended up with an interest in the property. In the New York case, the winners included the former spouse's child by a prior marriage. For other cases to the same effect, see Porter v. Porter, 286 N.W.2d 649 (Iowa 1979); Bloom v. Selfon, 555 A.2d 75 (Pa. 1989); Estate of Graef, 368 N.W.2d 633 (Wis. 1985). *Given that, during divorce process or in the aftermath of the divorce, the former spouse's relatives are likely to side with the former spouse, breaking down or weakening any former ties that may previously have developed between the transferor and the former spouse's relatives, seldom would the transferor have favored such a result. This section, therefore, also revokes these gifts.* [Emphasis added.]

Thus, it is clear that this provision in the UPC was updated because the drafters of the UPC believed that, in the vast majority of cases, an individual would not want bequests or devises to a former spouse's relatives to remain valid after a divorce.

When our Legislature enacted EPIC in 1998, it adopted the 1990 version of the UPC, including § 2-804, which is currently found in MCL 700.2806 and MCL 700.2807.[17] One of the express purposes of EPIC, which the Legislature adopted from the UPC, is "[t]o make the law uniform among the various jurisdictions, both within and outside of this state."[18] This purpose—and the other purposes listed in the statute—may inform our interpretation of EPIC to the extent that it does not conflict with the plain meaning of the

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> (1) revokes any revocable:
>
> (A) disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse . . . .

[17] The language is identical to that in UPC § 2-804, except for a few stylistic changes.

[18] MCL 700.1201(d); see also UPC § 1-102 (1990).

text at issue.[19] Furthermore, although the comments to a uniform law are not binding, they "are useful aids to interpretation and construction."[20] These two interpretive principles make it abundantly clear that the Legislature did not intend the revocation-upon-divorce provision to require or allow courts to consider whether an affinal relationship created by a marriage survived divorce. When the Legislature adopted UPC § 2-804, it knew that the UPC's default revocation-upon-divorce rule had been changed because the drafters of the UPC recognized that most transferors would not want gifts in the governing instrument to go to relatives of the former spouse. The Legislature incorporated that new rule by adopting MCL 700.2806 and MCL 700.2807.[21]

Another express purpose of EPIC is "[t]o promote a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors."[22] Applying MCL 700.2807(1)(a)(*i*) as the lower courts in this case did is consistent with this purpose as well. If courts were permitted or required to determine whether the subjective actions of a testator after divorce are indicative of an affinal relationship continuing with relatives of the former spouse, complicated factual determinations would need to be made in many trust and estate cases involving divorced decedents. Such a result would obviously be inconsistent with the Legislature's stated purpose in enacting EPIC.[23]

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[19] See *People v Wood*, 506 Mich 114, 146 (2020) (VIVIANO, J., dissenting) ("A proper contextual analysis in this case includes consideration of statutory purpose 'in its concrete manifestations as deduced from close reading of the text.' "), quoting Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 20; see also *Reading Law*, pp 217-220 (explaining that a purpose clause "is a permissible indicator of meaning").

[20] *Shurlow v Bonthuis*, 456 Mich 730, 735 n 7 (1998); see also *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 507 Mich 272, 293 & n 39 (2021).

[21] Thus, contrary to Justice WELCH's assertion, the underpinnings of MCL 700.2807 are not "based upon antiquated notions of family relationships set forth in cases decided at a time when divorce was largely prohibited by law." Rather, they are based upon EPIC's recognition that the old default rule of treating a former spouse as predeceasing the testator failed to reflect the typical donative intent of testators. The changes to EPIC, which incorporated the changes to the UPC, came as a result of dissatisfaction with the old rule, as demonstrated by the discussion of cases from the 1970s and 1980s in the comment to UPC § 2-804.

[22] MCL 700.1201(c).

[23] It is also worth noting that Justice WELCH's position that a statute should "assum[e] that a written estate plan means what it says" sweeps too broadly. Under her logic, even a former spouse included in a trust or will written prior to a divorce should still inherit after

In summary, the conclusion reached by the lower courts in this case is consistent with the Legislature's intent when it enacted EPIC. Evidence that a familial relationship was maintained between a testator and a relative of the testator's former spouse is insufficient to overcome the revocation-upon-divorce provision of MCL 700.2807(1)(a)(*i*) absent express language in the governing instrument to the contrary.

WELCH, J. (*concurring*).

I join Chief Justice CLEMENT in her concurrence, wherein she aptly sets forth the history of the definition of "affinity" and its application in various contexts after the death of a spouse or former spouse. I too am skeptical that continued adherence to *Shippee v Shippee's Estate*, 255 Mich 35 (1931), aligns with the common law development of "affinity" and agree with her that *In re Bordeaux Estate*, 37 Wash 2d 561 (1950), is persuasive. Like Chief Justice CLEMENT, I concur in the result to deny leave in this matter under MCR 7.305(B)(3) given that the issue appears to arise infrequently.

I write separately to encourage the Legislature to reexamine MCL 700.2807—the provision of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., at issue in this case—which, upon divorce, automatically revokes the disposition of assets to stepchildren explicitly set forth in a former stepparent's will or trust. The underpinnings of this section of EPIC are based upon antiquated notions of family relationships set forth in cases decided at a time when divorce was largely prohibited by law. Further, the current statutory scheme revokes clearly written directives from a decedent, which is contrary to how individuals typically understand estate planning matters.

A person's estate "passes by intestate succession to the decedent's heirs" absent modification by will. MCL 700.2101. Stepchildren are not included in the intestacy succession statute. See MCL 700.1103(f) (describing "child" as one who is entitled to take as part of intestate succession laws but stating that the term "child" "does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant").

As a result, in order for a stepchild to receive the benefits of any estate plan upon the death of a stepparent, the stepchild must be specifically named in an estate planning

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divorce. After all, that *is* what the estate plan says. But surely most Michiganders with trusts or wills would agree that this is not what they would want to happen if they got divorced. See generally *Sveen v Melin*, 584 US ___, ___; 138 S Ct 1815, 1819 (2018) (recognizing that revocation-upon-divorce statutes "rest on a 'judgment about the typical testator's probable intent' " and "that the average Joe does not want his ex inheriting what he leaves behind"), quoting Sitkoff & Dukeminier, Wills, Trusts, and Estates (10th ed, 2017), p 239.

document. But even when a stepparent has added a stepchild as a beneficiary to a will or trust, the stepchild is automatically cut out of the estate plan upon divorce by MCL 700.2807(1)(a)(*i*) if "not related to the divorced individual by blood, adoption, or by affinity." MCL 700.2806(e). To avoid this result, the stepparent must state in express terms in a legal document or a court order an intent to keep the stepchild in their estate plan despite the divorce. MCL 700.2807(1).[24]

Petitioner Katelyn Banaszak was named in her stepfather's will and listed as the sole child and beneficiary of a trust created while her mother and stepfather were still married. After her mother and stepfather divorced, she remained listed as a beneficiary. While petitioner alleged that she had been raised by her stepfather since she was a child and that she remained close to him after he and her mother divorced when she was 34 years old, the lower courts ruled that EPIC did not allow for her to be a beneficiary of her stepfather's estate plan. Petitioner argued that she continued to be related to her stepfather "by affinity" as set forth in MCL 700.2806(e) despite the fact that her mother, whose marriage created the affinity, had divorced her stepfather. The lower courts disagreed, concluding that the definition of "affinity" did not include petitioner because she and the decedent were "not related by marriage after the decedent and [petitioner's mother] divorced" and instead only included people related by an existing marriage or through a living child born of the marriage.

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[24] The relevant portions of MCL 700.2807 provide:

> (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. [Emphasis added.]

"Relative of the divorced individual's former spouse" is, in turn, defined as someone 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*." MCL 700.2806(e) (emphasis added).

The underlying definition of "affinity" used by courts in the context of inheritance and the continued relationship to a deceased spouse's family is derived from our decisions in *Bliss v Caille Bros Co*, 149 Mich 601 (1907), and *Shippee*, 255 Mich at 37. *Bliss* was the first case in which affinity was defined presumptively 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." *Id*. at 608. In *Shippee*, that definition was clarified when a widow cared for her deceased husband's elderly mother, Mary Shippee. After Mary died, the widow sought payment from the estate for care she had provided to Mary.

We had to decide whether the widow remained connected to Mary by affinity after the husband had died. If, after the death of her husband, the widow was still related by "affinity" to Mary, the presumption was that her care for the elderly woman was gratuitous absent a specific contract and that she could therefore not file a claim for payment against the estate. *Id*. at 36-37. We held that because there was a surviving child who had been born before the husband's death, the affinal relationship between the widow and Mary continued. *Id*. at 37. The widow was therefore deemed incapable of collecting against Mary's estate for the care rendered absent an explicit contract. In other words, the birth and continued survival of the grandchild meant that the widow remained connected to Mary "by affinity."

Both *Bliss and Shippee* have had lasting effects. Our cases have reiterated the definitions from *Bliss* and *Shippee* to hold that relationships between in-laws are "by affinity" and that children from marriage are required for the affinal relationship to survive death or divorce. See *In re Oversmith's Estate*, 340 Mich 104, 107 (1954) (reaffirming *Shippee* in the context of gratuitous services provided to an in-law); *People v Zajaczkowski*, 493 Mich 6, 13 (2012) (defining "affinity" as " 'the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other' "), quoting *Bliss*, 149 Mich at 608; *In re Monahan Estate*, unpublished per curiam opinion of the Court of Appeals, issued November 20, 2007 (Docket No. 271408), p 5 (holding in dicta that EPIC requires revocation of gifts to stepchildren upon divorce where there are no children from that marriage for wills created after its enactment); *In re Fink Estate*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2008 (Docket No. 278266) (same). In short, if a child was not born to a marriage and alive at the time of one spouse's death, the surviving spouse is no longer related "by affinity" to her former in-laws. She thus has no legal rights that would have otherwise existed had a child been born to the marriage.

The same rationale has been extended to step-relationships: If a child is born to a marriage and survives the decedent parent, then any stepchildren from that marriage remain related "by affinity" to their stepparent, even if the parents divorced. In that situation, a former stepchild can inherit under EPIC if named as a beneficiary. See *In re Monahan Estate*; *In re Fink Estate*. For example, Carol has three daughters and marries Mike, who

has three sons. If Carol and Mike had a child together named Oliver and later divorced, then, so long as Oliver was alive at the time of Mike's death, Carol's daughters would remain related to Mike "by affinity." Likewise, Mike's sons would remain related to Carol "by affinity" both after the divorce and after Carol dies so long as Oliver is still alive. Oliver, as a half-sibling, is the connector allowing the stepchildren to remain related to Carol and Mike "by affinity," even after the divorce. Thus, if Mike listed Carol's daughters (Marsha, Jan, and Cindy) in his estate plan before divorcing Carol but never expressly stated that he intended to keep them in the plan after the divorce, Marsha, Jan, and Cindy could still inherit from Mike. But if Oliver was never born, or was born and predeceased Mike, then there would be no affinity connection remaining between Carol's daughters and Mike—and thus they no longer could inherit from him unless he expressly stated that he intended to have them be beneficiaries even if divorced from Carol. Whether Oliver was born (and survives Mike) is the entire key to determining whether Marsha, Jan, and Cindy still are related "by affinity" to Mike.

I find *Shippee*'s holding—that a family is connected only through living children between the decedent and surviving spouse—to be antithetical to a modern understanding of how we view "family." In the instant case, petitioner's mother and stepfather never had a child together. Had they done so, and had that child been alive at the time of her former stepfather's death, then petitioner would be related by affinity to her former stepfather and still be the beneficiary of his estate plan. *Shippee*'s 1931 holding allowing for an "affinity relationship" between a surviving spouse and a deceased spouse's family only if a child was born to the marriage excludes multitudes of families: those who, after blending their existing families, have no more children by choice or circumstance; families who choose not to have children; families whose children have died;[25] and LGBTQ+ couples for whom traditional parenting arrangements were historically not available or legal.[26]

Furthermore, the extension of the 1931 *Shippee* rationale to stepchildren and divorcees was implemented at a time when divorce was only available for very limited

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[25] Continuing with the Brady Bunch analogy, it is an incongruous result that if Oliver lives to 30 years old but then tragically dies before Mike dies, Marsha, Jan, and Cindy all cease to be related by affinity to Mike (and likewise Greg, Peter, and Bobby to Carol). Even if Mike and Carol divorced 20 years prior to Mike's death and all the kids remained connected to their former stepparent by affinity for the next 20 years, that affinity disappears once Oliver dies.

[26] See, e.g., Michigan Legal Help, *Growing Your Family: An Overview for Same-Sex Parents* (describing the complexities of same-sex parenting under Michigan law), available at <https://michiganlegalhelp.org/resources/family/growing-your-family-overview-same-sex-parents> (accessed July 6, 2023) [https://perma.cc/HY68-DREH].

reasons. [27] The law also prohibited divorced women from remarrying while permitting widows or widowers to do so.[28] As a practical matter, if a divorced woman could not get remarried, then there were no future step-relationships for that divorced woman's child. It is troubling, then, that we are forced to continue to apply a rule enunciated at a time when so many aspects of family law—and families—that now seem self-evident were not just controversial, but illegal.

As a final matter, in almost all facets of our law, it is axiomatic that a party is held to their own words. See, e.g., *Mich Chandelier Co v Morse*, 297 Mich 41, 49 (1941) ("The law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest."); see also Driscoll and McLennon, *Estate Planning Concerns of the Not So Rich or Famous*, 40 Est Plan 35 (2013) (discussing the complexities of estate planning and the need for a written estate plan for estates of all sizes). The challenged portion of EPIC in this matter appears to be the exception to this rule. Rather than hold people to what they have clearly stated in a legally binding document, EPIC instead assumes that a testator or grantor has changed their mind about dispositions to their stepchildren, regardless of whether the stepparent had a close relationship with their stepchildren or not. Only if the stepparent proactively states that they really meant what they previously stated in writing can stepchildren remain beneficiaries. See MCL 700.2807(1)(a)(*i*) (dictating that divorce rescinds any bequests to relatives of the former spouse absent a clear statement to the contrary in the governing instrument, a court order, or a contract relating to division of property).

While this result is, as I noted earlier, based upon antiquated notions of divorce, it is also contrary to every norm we have in our legal system and a concept that most people well understand: what we put in writing is the best expression of our intent. It is counterintuitive that the law presumes a grantor or testator did not mean what they said in writing. While two amici curiae—the State Bar of Michigan's Probate and Estate Planning Section and its Family Law Section—both expressed the need for a hard-and-fast rule, I find it troubling that the hard-and-fast rule is based upon the idea that a stepparent intends to strip stepchildren of all benefits after a divorce—even when that stepparent included a stepchild in an estate plan. Given that a huge percentage of parties navigate the divorce

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[27] Divorce was only mandated to be granted for adultery, impotency, imprisonment of one of the spouses for a term longer than three years, desertion for more than two years, and drunkenness. 1915 CL 11397. Additionally, a circuit court *could* but was *not obligated* to recognize a divorce granted in another jurisdiction. *Id*.

[28] 1915 CL 11392 ("All marriages which are prohibited by law on account of . . . either of [the spouses] having a former wife or husband then living, . . . shall, if solemnized within this state, be absolutely void . . . .").

process pro se,[29] it is understandable that a divorcing stepparent might assume that their written estate planning documents in fact govern how their estate will be distributed, even after they divorce. As of 2013, 48% of divorces in Michigan were filed by self-represented plaintiffs and 68% of divorce actions had one or more self-represented parties.[30] This level of self-representation should broadly counsel against an exception to axiomatic rules that the average pro se litigant would likely understand. The desire to apply an easy rule to estate plans postdivorce is certainly understandable. But EPIC is first and foremost supposed to assess donor intent. MCL 700.1201(b) ("This act shall be liberally construed and applied to promote its underlying purposes and policies, which include . . . [t]o discover and make effective a decedent's intent in distribution of the decedent's property."). A statute assuming that a written estate plan means what is says would likewise be an easy rule to apply.[31]

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[29] See McMullen & Oswald, *Why Do We Need A Lawyer?: An Empirical Study of Divorce Cases*, 12 J L & Fam Stud 57, 57 (2010) (describing the "quiet revolution going on in divorce courts throughout America" wherein "many divorce litigants are foregoing lawyers and handling their divorces by themselves").

[30] Michigan Legal Help, *Michigan Legal Help Evaluation Report: An Examination of the Efficacy of the Michigan Legal Help Website in Helping Self-Represented Litigants Successfully Navigate the Divorce Process* (January 2015), p 6, available at <https://mplp.org/sites/default/files/2020-02/michigan-legal-help-evaluation-report-1-15.pdf> (accessed July 6, 2023) [https://perma.cc/GM3M-TMUH].

[31] Justice VIVIANO notes that EPIC was drafted with the backdrop of the prior UPC rule in mind. I do not dispute this fact. My broader point remains that the rule in EPIC pushes the law backwards insofar as it automatically terminates any relationship between a divorced person and their former *stepchild*, regardless of any actual evidence that they remained familial. This attitude toward the effect of a divorce on the relationship between individuals beyond the formerly married couple is outdated. While I agree with Justice VIVIANO that automatic revocation makes sense as to former spouses, the prior UPC also provided that former spouses could not inherit after divorce. But there is a difference between a former spouse and a stepchild. A spouse has many automatic inheritance rights under the law, which makes clarity upon divorce necessary. The same cannot be said for a stepchild, who can only inherit from a stepparent if specifically listed as a beneficiary in an estate planning document. That proactive step, required by law, is indicative of intent. Because of this, I find the *Shippee* rule—which would have allowed Ms. Banaszak to inherit if "the marriage [had] resulted in issue who are still living"—to be based on antiquated norms given the changing dynamics of family relationships. *Shippee*, 255 Mich at 37 (quotation marks and citation omitted).

EPIC already ensures that any inclusion of stepchildren in a testator's estate is purposeful. See MCL 700.1103(f). To add a presumption that the grantor or testator did not mean what they said is based on antiquated assumptions about family dynamics, is counterintuitive to the notion that written documents express intent, and is perilous in an era of online do-it-yourself wills and pro se divorces where parties might not have legal representatives informing them that the general rules do not apply. I encourage the Legislature to look at this issue and reconsider whether people setting forth their intent in wills and trust need protection from their own stated intentions.