SUMMARY
November 4, 2021

2021COA136

No. 20CA1323, *In re Estate of Dowdy* — Probate — Family Allowance

In this probate case, a division of the court of appeals interprets the family allowance statute, section 15-11-404, C.R.S. 2021, and concludes that it creates three separate categories of potential beneficiaries: (1) the decedent's surviving spouse; (2) the decedent's minor children; and (3) the decedent's dependent children. As a matter of first impression, the division holds that a surviving spouse is entitled to receive a family allowance when the decedent has no minor or dependent children. Accordingly, the order is reversed and the case is remanded for the determination and award of a family allowance.

COLORADO COURT OF APPEALS **2021COA136**

Court of Appeals No. 20CA1323
El Paso County District Court No. 20PR7
Honorable Vincent N. Rahaman, Magistrate

In re the Estate of Alvin Dowdy, deceased.

Daniel Travers, as Personal Representative of the Estate of Alvin Dowdy,

Appellant,

v.

Donna Chervellera, Kristy D. Kruse, Brenda S. Travers, Vickie L. Fevig, Pamela J. Kirby, and Patricia Reagan,

Appellees.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division IV
Opinion by JUDGE FREYRE
J. Jones and Tow, JJ., concur

Announced November 4, 2021

Gordon J. Williams, P.C., Gordon J. Williams, Colorado Springs, Colorado, for Appellant

No Appearance for Appellees

Kirtland & Seal, L.L.C., Michael A. Kirtland, Colorado Springs, Colorado, for Amicus Curiae Colorado Chapter, National Academy of Elder Law Attorneys

¶ 1 In this probate case, we are asked to interpret Colorado's family allowance statute, section 15-11-404, C.R.S. 2021, and to decide, as a matter of first impression, whether a surviving spouse is entitled to receive a family allowance when the decedent has no minor or dependent children. We conclude that the statute's plain language entitles a surviving spouse to receive a family allowance even when the decedent has no minor or dependent children.

¶ 2 Because the district court concluded otherwise, Mary Dowdy, the surviving spouse, and Daniel Travers, the estate's personal representative (PR), appeal the district court's order denying her request for a family allowance. We reverse and remand the case for further proceedings.

I. Background

¶ 3 Alvin Dowdy died testate on September 25, 2019, and was survived by his wife and six adult children, Donna Chervellera, Kristy D. Kruse, Brenda S. Travers, Vickie L. Fevig, Pamela J. Kirby, and Patricia Reagan. The will devised ten acres of an eighty-acre

parcel of land to each of his children[1] and ten acres to his wife. The remainder of the estate, including real and personal property, was "to be dispersed, disposed or otherwise handled by [his] Personal Representative."

¶ 4 Before Daniel's[2] formal appointment, on April 6, 2020, Mary filed a timely request for exempt property and a family allowance with the district court, and she petitioned for an elective share. On the advice of counsel, Daniel filed a notice of disallowance of claims for a family allowance based on a 2018 Jefferson County District Court order in an unrelated case finding that a surviving spouse was not entitled to a family allowance because the decedent in that case had no minor or dependent children.[3]

¶ 5 In a thorough written order, the district court found that Mary qualified for the exempt property allowance under section 15-11-403, C.R.S. 2021. However, relying on its perception of the plain

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[1] Decedent had a total of seven children, but one child predeceased him, so the remaining ten acres passed to his deceased child's children.

[2] Because two of the parties share the last name, we use first names to distinguish them and mean no disrespect to the parties.

[3] Daniel has reversed the position he took in the district court and asserts that his prior counsel's advice was erroneous.

language of section 15-11-404(1), the court found that she did not qualify for a family allowance because her husband had no minor or dependent children. Specifically, the court interpreted the word "and," located in "decedent's surviving spouse *and* minor children who the decedent was obligated to support," § 15-11-404(1), to entitle a surviving spouse to the family allowance only when the decedent had minor or dependent children. Because the decedent has neither, his surviving spouse did not qualify for a family allowance.

¶ 6 The court also considered changes to the statute. It found that the General Assembly's removal of the phrase "[i]f there are no surviving children under twenty-one years of age and no dependent children, the allowance is payable to the surviving spouse" from section 15-11-403 in 1994, and its replacement with the words "surviving spouse and surviving minor children" evidenced an intent to permit a family allowance only when the decedent has minor or dependent children. *See* Ch. 178, sec. 3, § 15-11-404, 1994 Colo. Sess. Laws 996. Accordingly, the district court granted Mary's request for the exempt property allowance, but it denied her request for a family allowance.

II. Family Allowance

¶ 7 Mary and the PR contend that the district court misconstrued section 15-11-404(1) and that a surviving spouse may be awarded a family allowance even when the decedent is not survived by minor or dependent children. For the reasons explained below, we agree.

A. Standard of Review and Applicable Law

¶ 8 We review a court's ruling denying a family allowance for an abuse of discretion. *In re Estate of Dandrea*, 40 Colo. App. 547, 550, 577 P.2d 1112, 1114 (1978). A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or when its ruling is based on an erroneous understanding of the law. *Sidman v. Sidman*, 2016 COA 44, ¶ 29. We defer to the court's factual findings and review its legal conclusions de novo. *In re Marriage of Garrett*, 2018 COA 154, ¶ 9.

¶ 9 We review a court's interpretation and application of the Colorado Probate Code de novo. *Beren v. Beren*, 2015 CO 29, ¶ 11. When interpreting a statute, our primary objective is to ascertain and give effect to the intent of the General Assembly. *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). If more than one statute addresses an issue, we must construe the related provisions as a

whole and read the statutes together. *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010). We begin with the plain language of the statute, giving the language its commonly accepted and understood meaning. *Id.* Where the language is unambiguous, "we do not resort to further rules of statutory construction to determine the statute's meaning." *Id.*

¶ 10 The Colorado Probate Code provisions governing exempt property and family allowances are modeled after part 2 of the Uniform Probate Code. *See In re Estate of Gadash*, 2017 COA 54, ¶ 21. We liberally construe and apply the code "to promote its underlying purposes and policies." § 15-10-102(1), C.R.S. 2021. As relevant here, the family allowance statute provides,

> [i]n addition to the right to exempt property, the decedent's surviving spouse and minor children who the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. . . . It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children or persons having the children's care and custody. If a minor child or dependent

> child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear.

§ 15-11-404(1). As well, the family allowance "is exempt from and has priority over all claims except claims for the costs and expenses of administration and reasonable final disposition and funeral expenses . . . ." *Id.*

¶ 11 The family allowance statute must be read in conjunction with the exempt property allowance statute, § 15-11-403, and the definition of "augmented estate" in the elective share statute, § 15-11-202(1), C.R.S. 2021. *In re Estate of Novitt*, 37 Colo. App. 524, 527, 549 P.2d 805, 808 (1976). The augmented estate is "the estate reduced by funeral and administration expenses, exempt property allowances, family allowances, and enforceable claims . . . ." *Id.* Thus, the right to exempt property and family allowance is not charged against the augmented estate, but, instead, is in addition to the surviving spouse's elective share of the augmented estate. § 15-11-202(3). The purpose of the augmented estate is, in part, to ensure that a surviving spouse receives adequate financial support.

In re Estate of Grasseschi, 776 P.2d 1136, 1139 (Colo. App. 1989). Similarly, the underlying purpose of the family allowance statute is to provide maintenance support to the decedent's family and to provide for a period of adjustment while the estate is undergoing administration. *In re Estate of Dandrea*, 40 Colo. App. at 550, 577 P.2d at 1114; *see also In re Estate of Plazza*, 34 Colo. App. 296, 303, 526 P.2d 155, 159 (1974) (The policy of providing statutory allowances to a widow "is to protect the surviving spouse during the period until a final distribution of the estate can be made.").

¶ 12 Additionally, the definition of "family" is not limited to parent-child relationships but also includes "persons connected by blood, by affinity, or by law . . . ." Black's Law Dictionary 721 (11th ed. 2014). Thus, the family includes persons connected by lawful marriage even if there are no children. Indeed, numerous cases have recognized that a surviving spouse without minor or dependent children constitutes a "family" under family allowance statutes. *See* H. H. Henry, Annotation, *Who is Included in Term "Family" or "Household" in Statutes Relating to Family Allowance or Exemption Out of Decedent's Estate*, 88 A.L.R.2d 890 (1963) (citing eleven cases in five jurisdictions recognizing that a surviving widow

with no children constitutes a "family" for the purposes of a homestead exemption and a family allowance).

B. Analysis

¶ 13 Construing the family allowance statute broadly and in the context of the Colorado Probate Code as a whole, we conclude, for three reasons, that the plain language of section 15-11-404(1) identifies three distinct groups of survivors who are entitled to a family allowance: (1) the decedent's surviving spouse; (2) the minor children who the decedent was obligated to support; and (3) any children who were in fact being supported by the decedent, including adult dependent children. *See* Black's Law Dictionary at 531 (defining dependent as "[s]omeone who relies on another for support"); *see also* § 15-10-102(1); Unif. Prob. Code § 2-404 cmt. (Unif. L. Comm'n amended 2019) ("A broad code must be drafted to provide the best possible protection for the family in all cases . . . .").

¶ 14 We first conclude that the phrase "children who were in fact being supported by the decedent" in section 15-11-404(1) does not modify minor children because it is not set off by a comma. *People v. Sprinkle*, 2021 CO 60, ¶ 27 (finding that the phrase at issue

modified "investigation" because the phrase was set off by commas); *Huffman v. City & Cnty. of Denver*, 2020 COA 59, ¶ 16 ("Because the domestic violence exception is set off by commas, we conclude that it relates to the words 'municipal violation' that precede it."); *Pena v. Indus. Claim Appeals Office*, 117 P.3d 84, 87 (Colo. App. 2004) (a phrase set off from a category by commas modifies one or more categories that precede it); *see also* § 2-4-101, C.R.S. 2021 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."). Instead, the phrase designates dependent children as a separate group entitled to family allowance.

¶ 15 Additionally, the family allowance statute references minor children and dependent children as separate groups throughout the statute. *See* § 15-11-404(1) ("for the use of the surviving spouse and minor *and* dependent children"; "If a minor child *or* dependent child is not living with the surviving spouse . . ."') (emphasis added). The separation between minor children and dependent children is significant because it reflects the General Assembly's intent to include dependent adult children as a group entitled to a family allowance. *See*, *e.g.*, *In re Marriage of Koltay*, 646 P.2d 405, 407

(Colo. App. 1982) (interpreting the language "appoint an attorney to represent the *interests of a minor or dependent child* with respect to his custody, support, and visitation" under section 14-10-116, C.R.S. 1973, and concluding that a court with jurisdiction to enter a decree for support may order support for adult dependent children) (emphasis added), *aff'd*, 667 P.2d 1374 (Colo. 1983); *Wilkinson v. Wilkinson*, 41 Colo. App. 364, 365, 585 P.2d 559, 600 (1978) (concluding that the absence of the word "minor" in the 1958 divorce law was significant and holding that "as the circumstances of the case warrant for the care and support of a child dependent upon his parent or parents for his support even after he has reached his majority"); *see also State v. Williams*, 896 A.2d 973, 981 (Md. 2006) ("The use of 'and,' rather than separating each specific category with a comma, indicates that the group, on either side of the conjunction, stands alone and is not a part of a series connected by a common characteristic."); *People v. Bylsma*, 889 N.W.2d 729, 741 (Mich. Ct. App. 2016) ("We believe that the use of the word 'and' in this context is conjunctive, joining 'patient' and 'a patient's primary caregiver' as two limited, and connected, categories of individuals who may raise a § 8 defense.").

¶ 16 A similar legislative intent is evidenced by section 15-11-405(1)(a)(II), C.R.S. 2021, which states that the "surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property." We must read the exempt property statute and the family allowance statute harmoniously. *See In re Estate of Novitt*, 37 Colo. App. at 527, 549 P.2d at 808.

¶ 17 Second, the payment instructions in section 15-11-404(1) further evidence an intent to provide maintenance to a surviving spouse by providing that a family allowance is payable to a living surviving spouse "*for the use of the surviving spouse* and minor and dependent children." (Emphasis added.) Thus, the maintenance is not solely intended for the use of the children. And, if the decedent's minor or dependent children do not live with the surviving spouse, the surviving spouse is still entitled to a share of the family allowance. *Id.*; *see also In re Marriage of Meek*, 669 P.2d 628, 629 (Colo. App. 1983) (awarding a family allowance to be divided between the decedent's surviving spouse and his minor child from a prior marriage who lived with the decedent's former spouse). To conclude that a surviving spouse would not be entitled

to a family allowance if the decedent had no minor or dependent children, but would be entitled to a family allowance even if the decedent had children who did not live with the surviving spouse, would lead to an absurd result. *See CLPF-Parkridge One, L.P. v. Harwell Invs., Inc.*, 105 P.3d 658, 661 (Colo. 2005) ("We do not adopt a construction that produces an illogical or absurd result.").

¶ 18 Third, our supreme court and divisions of this court have upheld family allowance awards to surviving spouses where the decedent did not have minor or dependent children. *See Foiles*, 233 P.3d at 699 (affirming the portion of the judgment awarding a family allowance to the surviving spouse where the decedent did not have minor or dependent children); *Estate of Cloos v. Cloos*, 2018 COA 161, ¶¶ 4, 6 (upholding the district court's family allowance award to the surviving spouse where the decedent did not have minor or dependent children); *In re Estate of Dandrea*, 40 Colo. App. at 548, 577 P.2d at 1113 (affirming the extension of a family allowance to the surviving spouse beyond the one-year statutory time period when the decedent had no minor or dependent children). And other jurisdictions with similar family allowance statutes have upheld awards of a family allowance to surviving

spouses when the decedent had no minor or dependent children. *See In re Estate of Seymour*, 671 N.W.2d 109, 113-15 (Mich. Ct. App. 2003); *Matter of Parkhurst*, 821 S.W.2d 575, 576, 579 (Mo. Ct. App. 1992); *Estate of Lutz*, 1997 ND 82, ¶ 51.

¶ 19 We disagree with the district court's alternative conclusion that the removal of the phrase "[i]f there are no surviving children under twenty-one years of age and no dependent children, the allowance is payable to the surviving spouse" from the family allowance statute in 1994 evidenced an intent to remove a surviving spouse's entitlement to a family allowance where there are no minor or dependent children. In so ruling, the court did not consider dependent children as a separate group and mistakenly quoted the law when it found that the removed phrase was replaced with "surviving spouse and surviving minor children." Before the statute was repealed and reenacted in 1994, it stated that "the surviving spouse and children under twenty-one years of age and dependent children" were entitled to a family allowance. § 15-11-403(1), C.R.S. 1987. This language is substantially similar to the current version of section 15-11-404, designating three groups of people entitled to family allowance.

¶ 20 As well, our supreme court's decision in *Foiles* and divisions of this court's decisions in *Estate of Cloos* and *In re Estate of Dandrea*, upholding family allowances for sole surviving spouses, were decided either before the General Assembly's addition of the phrase "[i]f there are no surviving children under twenty-one years of age and no dependent children, the allowance is payable to the surviving spouse" in 1981, *see* § 15-11-403, C.R.S. 1981, or after the phrase was removed in 1994, *see* § 15-11-404, C.R.S. 1994. Because there is no specific provision for payment to a surviving spouse where there are no children, the statute's plain language implies that a surviving spouse is entitled to a family allowance, under these circumstances. *See* James R. Wade, *Colorado Law of Wills, Trusts, and Fiduciary Administration* 278 (9th ed. 2019). Moreover, the Uniform Probate Code Practice Manual makes no distinction between a sole surviving spouse or one with the decedent's minor or dependent children when awarding a family allowance. *Uniform Probate Code Practice Manual* 56-57 (Robert R. Wright et al. eds., 1972) ("The surviving spouse domiciled in the state, minor children whom the decedent was obligated to support,

and children who were in fact being supported by the decedent are within the scope of [a family allowance].").

¶ 21 Accordingly, we conclude that the district court abused its discretion by denying Mary's request for a family allowance.

III. Conclusion

¶ 22 The order is reversed, and the case is remanded for the determination and award of a family allowance.

JUDGE J. JONES and JUDGE TOW concur.