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# Recent Developments: Friedman v. Hannan: The Automatic Revocation of Will Provisions "Relating to" a Spouse upon Decedent's Marital Dissolution Is Not Limited to Bequests Made to or for the Direct Benefit of the Former Spouse, and They May Be Extended to Bequests to Relatives of the Former Spouse

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## RECENT DEVELOPMENT

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### ***FRIEDMAN v. HANNAN: THE AUTOMATIC REVOCATION OF WILL PROVISIONS “RELATING TO” A SPOUSE UPON DECEDENT’S MARITAL DISSOLUTION IS NOT LIMITED TO BEQUESTS MADE TO OR FOR THE DIRECT BENEFIT OF THE FORMER SPOUSE, AND THEY MAY BE EXTENDED TO BEQUESTS TO RELATIVES OF THE FORMER SPOUSE.***

**By: Cailin Talbert**

The Court of Appeals of Maryland held that a statute, which mandates the revocation of will provisions relating to the former spouse following dissolution of the marriage, is not restricted in its effect to gifts for the direct benefit of that former spouse. *Friedman v. Hannan*, 412 Md. 328, 987 A.2d 60 (2010). Specifically, bequests by a decedent to a former spouse’s family members “relate to” the spouse and will be revoked pursuant to section 4-105(4) of the Estates and Trusts Article of the Maryland Code, absent evidence that the bequests were made for reasons independent of the marital relationship. *Id.* at 348, 987 A.2d at 72.

On June 5, 1981, James Hannan (“Decedent”) married Anna Zelinski (“Zelinski”). The two later divorced on February 6, 2001. Decedent died on September 10, 2006, never having remarried. During his marriage to Zelinski, Decedent drafted and executed a will, presumably on his own and without the help of a lawyer, which he did not revoke or amend prior to his death. Item Four of the will provided for the liquidation of Decedent’s real and personal property and division of the proceeds equally between “[Decedent’s] surviving immediate family members and those surviving immediate family members of [his] Wife.” The provision then listed the members of those groups individually, by name.

Decedent’s brother, Jerome B. Hannan (“Hannan”), filed the will with the Register of Wills and was appointed Personal Representative of Decedent’s estate. On May 16, 2007, the Orphans’ Court for Baltimore City ordered that the will not be admitted to probate, effectively leaving Decedent intestate. The former spouse’s immediate family members (collectively, “Friedman”) and Hannan

both appealed to the Circuit Court for Baltimore City. The circuit court found that Item Four was a residuary clause, that Decedent, therefore, died testate, and that only the immediate family members of Decedent were to receive proceeds from the estate. The Court of Special Appeals of Maryland affirmed the decision of the trial court. The Court of Appeals of Maryland subsequently granted Friedman's petition for writ of certiorari.

The central issue in this case is whether the divorce of Decedent and Zelinski effectuated a revocation of the bequest to Friedman in Item Four of the will. *Friedman*, 412 Md. at 336, 987 A.2d at 65. Section 4-105(4) of the Estates and Trusts Article sets forth that divorce, when subsequent to the execution of a will, is a circumstance under which "all provisions in the will relating to the spouse, and only those provisions," may be revoked. *Id.* (quoting MD. CODE ANN., EST. & TRUSTS § 4-105(4) (2001)). To determine whether the statute allowed the automatic revocation of the Friedman bequest, the court examined the meaning of the phrase "relating to the spouse" and the Decedent's expressed intent in creating the bequest. *Id.* at 337-39, 987 A.2d at 65-66.

Friedman contended that the statutory phrase "relating to the spouse" called for a narrow reading, mandating revocation only where the bequests were made to or for the direct benefit of the spouse. *Id.* at 337, 987 A.2d at 65. The Court of Appeals of Maryland rejected Friedman's argument, however, and read the phrase "relating to" broadly, which allowed its application to encompass bequests made to persons other than the spouse, as well. *Id.* at 338-39, 987 A.2d at 66. Following the principles of statutory interpretation, the court determined that the plain meaning of "relate" and, by extension, "relating to," required only that there be a connection between two subjects, not that they be identical. *Id.* at 338, 987 A.2d at 66. Therefore, the court held, when deciding whether a particular bequest is one "relating to the spouse" under section 4-105(4), the trier of fact, in the application of such a broad phrase, is not limited to only those bequests to or for the benefit of the spouse. *Friedman*, 412 Md. at 338-39, 987 A.2d at 66.

Further, the court noted that, if the General Assembly intended section 4-105(4) to apply more narrowly, inclusion of the term "relating to" would be superfluous. *Id.* at 339, 987 A.2d at 66-67. The court reasoned that the choice to use the term, rather than to direct revocation of only those provisions "for the former spouse," indicated that a broad reading of the statute was proper. *Id.* The court

determined that the General Assembly created section 4-105(4) of the Estates and Trusts Article to provide a far-reaching remedy to avoid unintended consequences resulting from a testator’s failure to change his or her will upon divorce. *Id.* at 345, 987 A.2d at 70. In doing so, the General Assembly recognized two major features of divorce: divorce generally results in the division of assets that were jointly owned, and it is usually hostile, with the bitterness typically emanating to the former spouse’s family, as well. *Id.*

Hannan argued that a broad reading of the phrase “relating to the spouse” required analysis of the connection between the two subjects with respect to the intent of the Decedent. *Id.* at 337, 987 A.2d at 65. Hannan contended that, where the connection lies in the relationship between the former spouse and the legatees, so that the bond between the Decedent and the legatees has no basis absent the marriage, revocation is necessary to effectuate the Decedent’s intent. *Friedman*, 412 Md. at 337, 987 A.2d at 65. In accepting this argument, the court noted that, when construing a will, the principal duty of the trial court is to ascertain and accomplish the testator’s intended objective. *Id.* at 339, 987 A.2d at 67 (quoting *Pfeufer v. Cyphers*, 397 Md. 643, 649, 919 A.2d 641, 645 (2007)). Appellate review of this type of fact driven decision, therefore, is limited to determining whether the trial court’s fact-findings were clearly erroneous or whether an error of law was made. *Id.*

Friedman asserted that such an error of law was in fact made, claiming that the trial court improperly considered the tenuous relationship between Decedent and members of his former spouse’s family in its determination as to whether the bequest in Item Four was “related to” that spouse for the purposes of section 4-105(4) of the Estates and Trusts Article. *Id.* at 344, 987 A.2d at 70. The court was not persuaded by this argument, however, noting that, when ascertaining intent, the court can consider relationships of the testator and those parties to whom the testator made a gift. *Id.* at 340, 987 A.2d at 67 (quoting *Robinson v. Mercantile Trust Co. of Balt.*, 180 Md. 336, 339, 24 A.2d 299, 300 (1942)). Furthermore, the court noted, in a case involving a will drawn by a layperson, the court should gather indications of intent from the four corners of the will viewed in the context of a person in the testator’s situation, giving special consideration to the circumstances in place at the time of the execution. *Id.* (quoting *Pfeufer*, 397 Md. at 649, 919 A.2d at 645; *Shriner’s Hosps. v. Md. Nat’l Bank*, 270 Md. 564, 570, 312 A.2d 546, 550 (1973); *Hebden v. Keim*, 196 Md. 45, 48, 75 A.2d 126, 128

(1950)). This reasoning is consistent with a similar ruling from California, which held that the testator intended to create two groups of legatees based on his description of those legatees as members of a group identified by familial ties, as opposed to specific members of the group as individuals. *Friedman*, 412 Md. at 344, 987 A.2d at 69 (citing *Hermon v. Urteago*, 39 Cal.App.4th 1525, 46 Cal.Rptr.2d 577, 579 (1995)).

The Court of Appeals of Maryland concluded that such a “group-minded” approach appropriately called for the revocation of class gifts in the context of section 4-105(4) of the Estates and Trusts Article. *Id.* at 344, 987 A.2d at 69-70. As a result, the trial court was correct in its conclusion that Decedent would not have intended the bequest to Friedman to survive a divorce based on his primary identification of the legatees according to their respective groups. *Id.* at 344-45, 987 A.2d at 70. Further, the Court of Appeals of Maryland gave little weight to the secondary naming of the individuals included in Item Four, viewing the placement of the word “and” between the last two persons of each group as Decedent’s intention to create two separate units. *Id.* at 346, 987 A.2d at 71. Finally, the court recognized Decedent’s choice to describe the Friedman group as the immediate family members of his “Wife,” as opposed to simply referring to Zelinski by name, thus cementing evidence of Decedent’s intent for the class to inherit only if he remained married. *Id.*

In *Friedman v. Hannan*, the Court of Appeals of Maryland clarified that the dictates of section 4-105(4) of the Estates and Trusts Article extend to groups of immediate family members of a former spouse. In doing so, the court determined that, to preserve a bequest to such a group upon a decedent’s marital dissolution, there must be evidence of an intention to do so on the part of the decedent. As a result, *Friedman* provides testators with the flexibility to make a gift that they otherwise would not have made, absent the existence of their marriage, while still protecting their assets in the event that divorce and death occur, prior to revocation of the will as a whole. Attorneys should still be aware that, if a testator makes bequests to a former spouse’s family members individually, or as a result of a reason independent of the marriage, a subsequent divorce may not result in revocation of the provision. Despite the protection of the automatic revocation and a couple’s likely aversion to contemplating the possible dissolution of their marriage, *Friedman* should ultimately serve as another reason for attorneys to encourage their clients to update their wills regularly, especially following a major life event, such as a divorce or a death in the family.