IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D10-3110

LAURIE BASILE and LEANNE KRAJEWSKI,

Appellants,

v.

JAMES MICHAEL ALDRICH, IN RE: Estate of Ann Dunn Aldrich,

Appellee.

_____/

Opinion filed August 23, 2011.

An appeal from the Circuit Court for Clay County.
John H. Skinner, Judge.

Jonathan D. Kaney III of Kaney & Olivari, P.L., Ormond Beach, for Appellants.

James J. Taylor Jr. of Taylor & Taylor P.A., Keystone Heights, for Appellee.

BENTON, C. J.

Laurie Basile and Leanne Krajewski, nieces of the late Ann Dunn Aldrich, seek review of the summary final judgment entered in favor of James Michael

Aldrich, Ann's brother and their uncle.[1] We hold that, where a will fails to dispose of all of a decedent's property (Ann's will has no residuary clause), "partial intestacy" results; and that property Ann owned at the time of her death not disposed of by her will passes to her heirs, in the manner prescribed by sections 732.101 - .111, Florida Statutes (2009). Accordingly, we reverse and remand.

I.

On April 5, 2004, Ms. Aldrich wrote her will on an "E-Z Legal Form." In Article III, entitled "Bequests," just after the form's pre-printed language "direct[ing] that after payment of all my just debts, my property be bequeathed in the manner following," she hand wrote instructions directing that all of the following "possessions listed" go to her sister, Mary Jane Eaton:

> –House, contents, lot at 150 SW Garden Street, Keystone Heights FL 32656
> –Fidelity Rollover IRA 162-583405 (800-544-6565)
> –United Defense Life Insurance (800-247-2196)
> –Automobile Chevy Tracker, 2CNBE 13c916952909
> –All bank accounts at M & S Bank 2226448, 264679, 0900020314 (352-473-7275).

Ann also wrote: "If Mary Jane Eaton dies before I do, I leave all listed to James Michael Aldrich, 2250 S. Palmetto 114 S Daytona FL 32119." Containing no other distributive provisions, the will was duly signed and witnessed.

[1] When she died, Ann left neither spouse nor child. Nor did any other sibling or any other offspring of predeceased siblings survive her.

Three years later, Ms. Eaton did die before Ann, becoming her benefactor instead of her beneficiary. Ms. Eaton left cash and land in Putnam County to Ms. Aldrich, who deposited the cash she inherited from Ms. Eaton in an account she opened for the purpose with Fidelity Investments. On October 9, 2009, Ann Dunn Aldrich herself passed away, never having revised her will to dispose of the inheritance she had received from her sister.

Mr. Aldrich was appointed personal representative of Ann's estate. After a court order authorized him to sell the Putnam County real property, he filed a petition for construction of the will and initiated an adversary proceeding in the probate case. The petition asked the court to decide who should receive the proceeds of the sale of the real property in Putnam County, and the cash Ann had inherited from Ms. Eaton and put in the Fidelity Investments account.

In his petition, Mr. Aldrich took the position that the most reasonable and appropriate construction of the will was that Ann intended her entire estate, including what she had inherited from her sister, to pass to him, citing (1) "[t]he will itself, which names only decedent's predeceased sister, Ms. Eaton, and [Mr. Aldrich] as beneficiaries, and which devised all of the property then owned by decedent"; (2) "[s]ection 732.6005(2), [Florida Statutes], which provides that a will is to be construed to pass all property that a testator owns at death, including property acquired after the execution of the will"; and (3) "[t]he legal presumption

that in making a will a testator intended to dispose of his or her entire estate, as well as the legal presumption against a construction that results in partial intestacy."

The petition did concede the possibility of another construction of the will, suggesting as an alternative that "by her will decedent intended to dispose of only the property specifically listed in the will, and not property that she may subsequently have acquired." Under the latter scenario, the petition recognized, the trial court would be required "to treat decedent as having died intestate as to the after-acquired property," and alleged that, in that event, the after-acquired property would pass one-half to Mr. Aldrich, one-quarter to Ms. Basile, and one-quarter to Ms. Krajewski. All agree that Mr. Aldrich is entitled to the property actually listed in the will.

The parties filed motions for summary judgment. The nieces, Ms. Basile and Ms. Krajewski, argued that, without any general devises and in the absence of a residuary clause, Ann's will contained no mechanism to dispose of the after-acquired property or any other property not mentioned in the will, so that she had died intestate as to the Putnam County property and the cash in the non-IRA Fidelity Investments account. The trial court rejected this argument on the purported authority of section 732.6005(2), and entered summary final judgment in favor of Mr. Aldrich. But section 732.6005(2) does not control the question.

Because the disputed property was not alluded to in the will, it does not matter whether it was acquired before or after the will was executed.

II.

At one time—under the Florida statute of wills of 1828, in force until the Revised Statutes took effect on June 13, 1892—a will was ineffective to devise Florida real estate that the testator had no interest in at the time the will was executed. See Frazier v. Boggs, 20 So. 245, 248 (Fla. 1896). Since June 13, 1892, however, a will containing a residuary clause has been effective to transfer after-acquired property. See DePass v. Kan. Masonic Home, 181 So. 410, 413 (Fla. 1938). Section 5459, Compiled General Laws of Florida (1927) provided:

> Construction of wills.-Every general or residuary devise or bequest in a will shall be construed to apply to the property owned by the testator at the time of his death, unless restricted in the will to that owned by him at the time of the execution of the will.

To like effect, the Legislature, in enacting the Probate Act of 1933, section 5477(2)(b), Compiled General Laws of Florida (Supp. 1933) (subsequently renumbered section 731.05(2)), provided:

> A will becomes effective at the time of the death of the testator and all property, real or personal, acquired by the testator after making his will is transmissible under general expressions in the will showing such to be the intention of the testator. Every will containing a residuary clause shall transmit after-acquired property, unless the testator expressly states in his will that such is not his intention.

The supreme court explained in In re Vail's Estate, 67 So. 2d 665, 670 (Fla. 1953), that the primary purpose of this section "was to permit transmissal of after-acquired property by will rather than by intestacy."

In 1974, the Florida Legislature adopted the Uniform Probate Code. As part of this enactment, section 731.05 was repealed, and section 732.602 was enacted. Ch. 74-106, § 1, at 227 and § 3, at 319, Laws of Fla. Newly enacted section 732.602 provided:

> Construction that will passes all property.-A will is construed to pass all property that the testator owns at his death, including property acquired after the execution of the will.[2]

§ 732.602, Fla. Stat. (1974 Supp.). Contrary to Mr. Aldrich's contention, our holding today does not improperly reinsert (by implication) language from section 5477(2) of the Probate Act of 1933 that the Legislature wanted to root out in 1974

[2] The Uniform Probate Code was approved by the National Conference of Commissioners on Uniform State Laws, and by the American Bar Association, in August of 1969. See Unif. Probate Code, Historical Notes, 8 U.L.A. 1 (1998). Section 2-604 of the 1969 Uniform Probate Code provided: "A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will." This provision was later moved to section 2-602 of the Uniform Probate Code, and amended to state: "A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death." Unif. Probate Code § 2-602, 8 U.L.A. 164 (1998). The Comment to this section states the purpose is "to assure that, for example, a residuary clause in a will not only passes property owned at death that is not otherwise devised, even though the property was acquired by the testator after the will was executed, but also passes property acquired by a testator's estate after his or her death." Id.

to effect a change.

For one thing, the 1974 amendment, effected by Chapter 74-106, § 1, at 227, Laws of Florida, was largely housecleaning not intended to effect substantive changes to section 5477(2) of the Probate Act of 1933. According to Henry P. Trawick, Jr., Trawick's Redfearn Wills and Administration in Florida, § 1.2 (2010-11 ed.), "[t]he Legislature created the Florida Uniform Probate Code Study Commission to consider adoption of the Uniform Probate Code. With little debate the commissioners decided that the Florida Probate Act of 1933 was generally satisfactory so the Commission placed the existing statutes in the format of the Uniform Probate Code insofar as possible. This had the effect of preserving considerable decisional law and of avoiding a number of significant and untested changes."

In 1975, former section 732.602 was repealed, and section 732.6005 was created. Ch. 75-220, §§ 33, 35, at 519-20, Laws. of Fla. Except for "genderfication," see Chapter 97-102, § 965, at 1342, Laws of Florida, and Chapter 2001-226, § 49, at 2004, Laws of Florida, the original version of section 732.6005 has never been amended. State, Dep't of Children & Family Servs. v. L.G., 801 So. 2d 1047, 1052 (Fla. 1st DCA 2001). Section 732.6005, Florida Statutes (2009), provides:

> (1) The intention of the testator as expressed in the will controls the legal effect of the testator's dispositions.

> The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.[3]
>
> (2) Subject to the foregoing, a will is construed to pass all property which the testator owns at death, including property acquired after the execution of the will.

(Emphasis supplied.) Section 732.6005 has always been codified under Part VI of the Florida Probate Code, the part entitled "rules of construction."

III.

Only subsection (1) of section 732.6005 applies to the dispute here: If discernible from the will, the testator's intent must be given effect, unless doing so would be illegal or otherwise contrary to public policy. See In re Estate of Tolin, 622 So. 2d 988, 990 (Fla. 1993); First Union Nat'l Bank of Fla., N.A. v. Frumkin, 659 So. 2d 463, 464 (Fla. 3d DCA 1995); Rogers v. Atl. Nat'l Bank of Jacksonville, 371 So. 2d 174, 176 (Fla. 1st DCA 1979). Subsection (2) of section 732.6005 does not apply because it is expressly "[s]ubject to" subsection (1), which provides: "The intention of the testator as expressed in the will controls the legal effect of the testator's dispositions." § 732.6005(1), Fla. Stat. (2009). The language of Ann's will is unambiguous and its intent is clear.

Ms. Aldrich devised her house and lot in Keystone Heights, and bequeathed its contents, together with other personal property that the will identifies with

[3] Section 732.6005(1), Florida Statutes (2009) is based on and virtually identical to section 2-603 of the 1969 Uniform Probate Code.

painstaking specificity.[4] Her will plainly evinces an intent to dispose of each particular item of property the will names. Equally plainly, the will manifests no intent to dispose of the disputed property, property the will does not allude to in any way. Among such property not so much as hinted at is the real property in Putnam County. Nor does the will, which lists bank accounts by specifying the account numbers, and a "Fidelity Rollover IRA 162-583405," make mention of cash in the other (non-IRA) Fidelity Investments account.

Insofar as it delimits the parts of her estate on which it operates, the will is fairly susceptible of only one interpretation. The "intention of the testator, as expressed in his will, shall prevail over all other considerations, if consistent with the principles of law." Lines v. Darden, 5 Fla. 51, 68 (1853) (emphasis supplied). "To the greatest extent possible, courts and personal representatives are obligated to honor the testator's intent in conformity with the contents of the will." Espinosa v. Sparber, Shevin, Shapo, Rosen & Heilbronner, 612 So. 2d 1378, 1380 (Fla. 1993) (emphasis supplied) (citing In re Blocks' Estate, 196 So. 410 (Fla. 1940)).

[4] "A specific legacy is a gift by will of property which is particularly designated and which is to be satisfied only by the receipt of the particular property described." In re Estate of Udell, 482 So. 2d 458, 460 (Fla. 4th DCA 1986) (quoting In re Estate of Parker, 110 So. 2d 498, 500 (Fla. 1st DCA 1959)). See also In re Estate of Gilbert, 585 So. 2d 970, 972 (Fla. 2d DCA 1991) (a specific bequest or devise "'is a gift of a particular thing or of a specified part of the testator's estate so described as to be capable of distinguishment from all others of the same kind.'" (quoting Park Lake Presbyterian Church v. Henry's Estate, 106 So. 2d 215, 217 (Fla. 2d DCA 1958))).

See also Diana v. Bentsen, 677 So. 2d 1374, 1376 (Fla. 1st DCA 1996) ("The purpose of construing a will is to give effect to the decedent's intention as expressed in the will.") (emphasis supplied).

In order for property, after-acquired or not, to pass under a will, the will must dispose of it in some manner. Whether acquired before, after, or at the time a will is executed, assets covered by no provision of the will—specific, general, or residuary—are not disposed of under the will. Ms. Aldrich's will does not say the first thing about real property in Putnam County or a non-IRA account at Fidelity Investments. The will cannot, therefore, dispose of these items, not because they are after-acquired, but because no provision of the will covers them.

IV.

A will is not subject to judicial revision merely because it does not dispose of all of the testator's property. Given the specificity of the devise and bequests in Ann Dunn Aldrich's will, including the house address, account numbers and a vehicle identification number, invocation of section 732.6005(2) as a basis for construing the will to dispose of the Putnam County property and an account not identified in the will is unwarranted. Synecdoche is a rhetorical device, not a judicial doctrine. "[I]f a will disposes of only one small specific item out of a large and valuable estate, it would be absurd to hold that the devisee of that one small item is entitled to the remainder of the estate." Matter of Estate of Allen, 388

N.W.2d 705, 707 (Mich. Ct. App. 1986). The same logic applies in the present case.

Those opposing partial intestacy in In re Estate of Barker, 448 So. 2d 28 (Fla. 1st DCA 1984), argued that the testatrix had evinced her intent to exclude certain of her heirs from taking anything more than the nominal (one-dollar) bequests she had made to them. (Ms. Aldrich's will reflects nothing of the kind regarding any of her heirs.) The Barker court's answer was: "'In order to cut off an heir's right to succession a testator must do more than merely evince an intention that the heir shall not share in the estate—he must make a valid disposition of his property.'" Id. at 31 (quoting In re Estate of Levy, 196 So. 2d 225, 229 (Fla. 3d DCA 1967)). Ms. Aldrich's will made no "valid disposition" of the Putnam County realty or of the non-IRA account at Fidelity Investments.

V.

A testator may choose to dispose of only a portion of his or her estate by will, allowing the balance to descend under the laws of intestate succession. See § 732.101(1), Fla. Stat. (2009); Barker, 448 So. 2d at 31; In re Stephan's Estate, 194 So. 343, 344 (Fla. 1940). See also § 733.805, Fla. Stat. (2009) (setting forth the order in which funds or property designated by the will abate, beginning with property passing by intestacy). While the will does not dispose of all the property Ann Dunn Aldrich owned at her death, this circumstance is hardly unique to her or

her estate and does not contravene any rule of law or public policy. Nor does the will reflect any mistake on her part.

The provisions of section 732.6005 plainly do require that the specific bequest of the contents of the Keystone Heights house be "construed to pass all" such contents which Ms. Aldrich owned at the time of her death "including property [any contents of the house] acquired after the execution of the will." § 732.6005(2), Fla. Stat. (2009). Similarly, the will should be "construed to pass all" the money at the time of her death in each of the bank accounts the will specifies, including money deposited in those accounts "after the execution of the will." Id. We reject the separate opinion's perplexing contention that in "effect, the majority opinion determines that section 732.6005 does not apply to wills that do not contain general devises or a residuary clause." Post, p. 15.

But no residuary clause nor any other "intention of the testator as expressed in the will" encompasses the Putnam County realty or any personalty aside from the subjects of the specific bequests. § 732.6005(1), Fla. Stat. (2009). The will contains no provision that would "necessarily indicate that she did not wish her residuary estate to be distributed to her legal heirs as intestate property." Barker, 448 So. 2d at 31. It does not matter whether or not Ann Dunn Aldrich owned real property in Putnam County or held cash in a non-IRA account at Fidelity Investments at the time she executed her will, or acquired the real property and

deposited the cash afterwards. In either event, the will as written and executed failed to dispose of those unmentioned assets.

VI.

Section 732.6005(2) is, after all, a rule of construction. Rules of construction are to be resorted to only if the testator's intent cannot be ascertained from the will itself. See, e.g., Barley v. Barcus, 877 So. 2d 42, 44 (Fla. 5th DCA 2004); First Nat'l Bank of Fla. v. Moffett, 479 So. 2d 312, 313 (Fla. 5th DCA 1985); In re Estate of Lesher, 365 So. 2d 815, 817 (Fla. 1st DCA 1979). The presumption against partial intestacy is designed to resolve ambiguities where they exist. The presumption should not be applied to create ambiguities in a will where none would otherwise exist.

In the present case, Ann's will makes her intent when she executed it crystal clear. "There are simply no conflicting provisions of the . . . will [in any way concerning the disputed property] which require construction." Barker, 448 So. 2d at 31. "'If the terms of a will are such as to permit two constructions, one of which results in intestacy and the other of which leads to a valid testamentary disposition, the construction is preferred which will prevent intestacy.' In re Gregory's Estate, 70 So. 2d 903, 907 (Fla. 1954) (quoting Redfearn on Wills and Administration of Estate in Florida, 2d ed., p. 192)." In re Estate of McGahee, 550 So. 2d 83, 87 (Fla. 1st DCA 1989) (emphasis supplied). The terms of Ms. Aldrich's will do not

dispose of any property other than the property the will specifically identifies, and cannot fairly be construed otherwise.

VII.

In an abundance of caution, we certify the following question as a question of great public importance within the meaning of Article V, section 3(b)(4) of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v):

> WHETHER SECTION 732.6005, FLORIDA STATUTES (2004), REQUIRES CONSTRUING A WILL AS DISPOSING OF PROPERTY NOT NAMED OR IN ANY WAY DESCRIBED IN THE WILL, DESPITE THE ABSENCE OF ANY RESIDUARY CLAUSE, OR ANY OTHER CLAUSE DISPOSING OF THE PROPERTY, WHERE THE DECEDENT ACQUIRED THE PROPERTY IN QUESTION AFTER THE WILL WAS EXECUTED?

We reverse the order granting summary judgment to the appellee, and remand with directions that summary judgment be entered for appellants, and for further proceedings consistent with this opinion.

THOMAS, J., CONCURS; VAN NORTWICK, J., CONCURS IN PART and DISSENTS IN PART WITH OPINION.

Van Nortwick, J., concurring in part and dissenting in part

I believe that the trial court correctly interpreted and applied section 732.6005(2), Florida Statutes (2004), in a manner consistent with legislative intent. Under this reading of the statute, all of the property the decedent acquired after she had executed her will in 2004 would pass under the will to appellee, the sole remaining beneficiary named in the will. Accordingly, I respectfully dissent to all but Part VII of the majority opinion. I concur in the certification of the question in Part VII.

Section 732.6005 falls under Part VI of the Florida Probate Code, entitled "Rules of Construction." In its entirety, it reads as follows:

> **732.6005 Rules of construction and intention.—**
>
> (1) The intention of the testator as expressed in the will controls the legal effect of the testator's dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.
>
> (2) Subject to the foregoing, a will is construed to pass all property which the testator owns at death, including property acquired after the execution of the will.

In effect, the majority opinion determines that section 732.6005 does not apply to wills that do not contain general devises or a residuary clause. The majority concludes that, since Ms. Aldrich's will did not dispose all of her property, she intended partial intestacy. However, the unambiguous language of section 732.6005 does not support this conclusion.

Former section 731.05, Florida Statutes (1973), evolved from the Florida Legislature's desire to remedy the common-law rule that after-acquired property did not pass by will. See DePass v. Kansas Masonic Home, 181 So. 410, 412-13 (Fla. 1938). The remedy was included in the Revised Statutes of 1892, and, by the time of DePass, was expressed in section 5477(2), Florida Statutes (Supp. 1934), which stated:

> [A] will becomes effective at the time of the death of the testator and all property, real or personal, acquired by the testator after making his will is transmissible under general expressions in the will showing such to be the intention of the testator. Every will containing a residuary clause shall transmit after-acquired property, unless the testator expressly states in his will that such is not his intention.

Id. at 413 (emphasis added). This portion of DePass was later cited in In re Vail's Estate, 67 So. 2d 665 (Fla. 1953), in which, in dicta "for clarity," the Florida Supreme Court quoted the second passage of section 5477(2), regarding after-acquired property, and noted that "this language is identical with the last sentence of present F.S.A. § 731.05(2)." Id. at 670. It also observed that the "primary purpose" of section 5477(2) "was to permit transmissal [sic] of after-acquired property by will rather than by intestacy, and the expression of contrary intention [of the testator] contemplated by the statute is therefore an expression that after-acquired property shall not pass under the will." Id. (emphasis in original).

As enunciated by this court in In re Estate of McGahee, 550 So. 2d 83 (Fla. 1st DCA 1989): "The primary goal of the law of wills, and the polestar guiding the

rules of will construction, is to effectuate the manifest intention of the testator." Id. at 85 (citing Marshall v. Hewett, 24 So. 2d 1 (1945), and In re Estate of Lenahan, 511 So. 2d 365 (Fla. 1st DCA 1987)). As earlier emphasized by the supreme court, "[t]he law of wills is calculated to avoid speculation as to the testator's intent and to concentrate upon what he said rather than what he might, or should, have wanted to say." In re Pratt's Estate, 88 So. 2d 499, 504 (Fla. 1955). Unquestionably, both section 732.6005 and its predecessor statutes embody this salutary purpose.

Furthermore, former section 731.05(2) and present section 732.6005(2) share an additional goal in will construction directed toward effectuating the intent of the testator, that being "a presumption against partial intestacy and allow[ing] a will to pass after-acquired property, absent a contrary intent." Henry A. Fenn & Edward F. Koren, The 1974 Florida Probate Code – A Marriage of Convenience, 27 U. Fla. L. Rev. 1, 32 (1974) (footnote omitted). Accord In re Vail's Estate, 67 So. 2d at 670; Dutcher v. Estate of Dutcher, 437 So. 2d 788, 789 (Fla. 2d DCA 1983) (observing that disposition under a will is favored over intestacy). In their article reviewing the expansive revision of the Florida Probate Code in 1974, the commentators were referring to then section 732.602, Florida Statutes (1974) – the precursor to section 732.6005 – that they described as "simply provid[ing]" that "'[a] will is construed to pass all property that the testator owns at his death including property acquired after the execution of the will.'" Fenn & Koren, 27 U.

Fla. L. Rev. at 32 (quoting section 732.602, Florida Statutes (1974)). But, critical to the point raised on appeal, it was specifically noted in the article that while section 731.05(2), Florida Statutes (1973), was similar to section 732.602, Florida Statutes (1974), it "appli[ed] only to wills containing a residuary clause." Id. at 32 n. 212 (emphasis added). In the newly created section 732.602, the legislature omitted the "residuary clause" language, and it is also absent in section 732.6005(2). As other recent commentators have observed of section 732.6005(2):

> A will is construed to pass all property a testator owns at death, including property acquired after the execution of the will.[n. 1]
>
> Disposition under a will is favored over intestacy.[n. 2]
>
> Accordingly, if a will contains no residuary clause, or if a doubt exists about whether a will is intended to dispose of all assets the testator owned at the time of death, the will will be construed to make such disposition.

See 12 Abraham M. Mora, Shelly Wald, & Lorna J. Scharlacken, Florida Estate Planning § 18:41 (2010-11 ed.) (bracketed footnotes citing, respectively, section 732.6005(2), Florida Statutes, and Dutcher v. Estate of Dutcher, 437 So. 2d 788 (Fla. 2d DCA 1983)). The majority's holding, that section 732.6005(2) requires a residuary clause to pass after-acquired property under a will, simply reinserts through implication language that was expressly omitted by the legislature in 1974.

It is a cardinal rule of statutory construction that when an amendment to a statute omits words, courts must presume that the legislature intended the statute to

have a different meaning than before the amendment. See Capella v. City of Gainesville, 377 So. 2d 658, 660 (Fla. 1979). More importantly, "when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Knowles v. Beverly Enterprises-Fla., Inc., 898 So. 2d 1, 5 (Fla. 2004) (citing Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)). By its clear and unambiguous terms, "unless a contrary intention is indicated in the will," section 732.6005(2) is "subject to" only the limitations expressed in subsection (1), those being "the intention of the testator as expressed in the will," and the "rules of construction" contained in Part VI of chapter 732 (i.e., section 732.601 ("Simultaneous Death Law"), section 732.603 ("Antilapse"), section 732.604 ("Failure of testamentary provision"), section 732.605 ("Change in securities"), section 732.606 ("Nonademption of specific devises"), section 732.607 ("Exercise of power of appointment"), section 732.608 ("Construction of generic terms") and section 732.609 ("Ademption by satisfaction")). Otherwise, section 732.6005(2) mandates that after-acquired property passes under the will, notwithstanding the absence of a residuary clause. Because none of the "rules of construction" expressed in Part VI apply in this case, the sole consideration relevant to resolving the issue at hand is the decedent's intent as expressed in her will.

The majority opinion relies on the only case that has directly addressed section 732.6005(2), In re Estate of Barker, 448 So. 2d 28 (Fla. 1st DCA 1984). However, Barker involved two wills, the second of which expressly revoked all prior wills made by the testatrix, and also omitted the residuary clause that was contained in the first will. The existing residual estate was worth approximately $50,000 in real estate and $37,000 in personalty, and one of the former beneficiaries of that residual estate petitioned to have established the first will to prevent the distribution of the residual estate under the second will by intestacy to eleven heirs. The trial court found that the second will effectively revoked the first one and that no legal theory operated to revive the residuary clause of the first will. In affirming, this court recognized the presumption that the testatrix understood and approved her will, and ruled that "[n]othing in the law precludes a testator from disposing of only a portion of his estate by will and allowing the balance to be distributed according to the law of intestate succession." Id. at 31. Significantly, however, this court also held, "[f]urther, appellant's reliance upon Section 732.6005(2), Florida Statutes, dealing with testamentary intent regarding after-acquired property is misplaced. That section has no application to the case at bar." Id. at 32.

Here, the trial court was asked to interpret a will that devised to the decedent's sister specific items with instructions that, should the sister predecease

her, all of the items listed should pass to her brother. Although there is nothing on the face of the will indicating that the items so devised consisted of the decedent's entire estate, there is also nothing on the face of the will indicating the decedent's intent that anyone other than either the decedent's sister or her brother receive anything under the will. In short, there was no "expression of contrary intention" by the decedent that the after-acquired property "shall not pass under the will." In re Vail's Estate, 67 So. 2d at 670 (emphasis in original). Given that clear intent, and in the absence of the application of any of the other rules of construction contained in Part VI of chapter 732, the property acquired by the decedent following the death of her sister would, by virtue of section 732.6005(2), pass under the will to appellee, and not according to the rules of intestacy to be divided between appellants and appellee.

The trial court's construction of the decedent's will is consistent with the meaning and intent of section 732.6005(2). Accordingly, the property acquired by the decedent from her sister following the execution of the decedent's will passed by the decedent's will according to the decedent's intent as expressed in her will. Section 732.6005(2) is wholly dependent on the testator's intent as expressed in the will, and this case presents no circumstances that cannot be resolved by an application of the plain language of the statute to the decedent's intent. I believe that the summary final judgment should be affirmed.