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**STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, Appellant,**
**v.**
**ESTATE OF KYLE WILLIAM BRUENING, Appellee.**

**No. 4D2022-2421**

**Florida Court of Appeals, Fourth District**

**September 20, 2023**

Not final until disposition of timely filed motion for rehearing.

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Nicholas Lopane, Judge; L.T. Case No. 22-2239 PRC.

Ashley Brooke Moody, Attorney General, Tallahassee, and Jacqueline I. Kurland, Senior Assistant Attorney General, Fort Lauderdale, for appellant.

Raymond Paparella of The Law Firm of Raymond Paparella, Boca Raton, and Richard Ehrlich, Coral Springs, for Katherine Mills, Andy Barter, Jr., and Leah Luce.

CIKLIN, J.

After Kyle Bruening ("the decedent") died without a will, leaving a substantial estate, distant relatives sought to be deemed beneficiaries of his intestate estate. The probate court entered an order authorizing the personal representative to devise the estate to these relatives. We hold this was error, as the relatives, who shared common great-grandparents with the decedent but otherwise had no familial relation with him, are not in any class of heirs identified by the controlling statute: section 732.103, Florida Statutes (2022).

The lower court appointed the decedent's friend, Michael Mahoney, as curator of the estate. Mahoney filed an affidavit of heirs indicating no known heirs. Subsequently, Katherine Mills filed an affidavit of heirs, averring she is the decedent's "second cousin," and that the decedent was never married and had no children, siblings, surviving parents or grandparents, or relatives other than Mills. Mills later filed a petition for administration, asserting she had an interest in the estate as a beneficiary.

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In her petition, she identified herself plus two other persons as beneficiaries, namely Andy Barter, Jr., and Leah Luce, both of them "second cousin[s] once removed." Revealed later was that Barter, Jr., and Luce are Mills' nephew and niece, respectively. Mills again identified herself as a "[s]econd [c]ousin." At Mills' request, the court appointed her as personal representative of the intestate estate.

Mills next petitioned to determine beneficiaries. Although we have not been provided a hearing transcript, the parties do not dispute the evidence established that the decedent was never married and had no children or aunts or uncles, his parents and grandparents predeceased him, and Mills and Barter, Jr. are descendants of the decedent's great-grandparents.[1] The appellant, the State of Florida, Department of Legal Affairs ("state"), appeared at the hearing and adopted Mahoney's position that no class of heirs existed under section 732.103, Florida Statutes (2022), and the decedent's estate must escheat to the state. The trial court determined that because Mills, Barter, Jr., and Luce are descendants of the decedent's great-grandparents, they are heirs under section 732.103.

The state challenges this ruling on appeal. Thus, the issue for this court is a purely legal one, and we exercise de novo review. *See Cohen v. Shushan*, 212 So.3d 1113, 1118 (Fla. 2d DCA 2017) (reviewing de novo an issue that "revolves around the legal significance that ought to be drawn from a reputed spouse relationship for purposes of Florida's intestacy law," as the issue is "one of legal analysis applied to undisputed facts").

We begin our analysis with section 732.101(1), Florida Statutes (2022), which provides that "[a]ny part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this code." "Heirs" and "heirs at law" are defined as "those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent." § 731.201(20), Fla. Stat. (2022). The Probate Code further provides that "[w]hen a person dies leaving an estate without being survived by any person entitled to a part of it, that part shall escheat to the state." § 732.107(1), Fla. Stat. (2022).

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Section 732.103 of the Probate Code is titled, "Share of other heirs," and provides as follows:

> The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:
>
> (1) To the descendants of the decedent.
>
> (2) If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.
>
> (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
>
> (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
>
> (a) To the grandfather and grandmother equally, or to the survivor of them.
>
> (b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
>
> (c) If there is either no paternal kindred or no maternal kindred, the estate shall go to the other kindred who survive, in the order stated above.
>
> (5) If there is no kindred of either part, the whole of the property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.
>
> (6) If none of the foregoing, and if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), including such victims in countries cooperating with the discriminatory policies of Nazi Germany, then to the descendants of the great-grandparents. The court shall allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to

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> substantiate his or her lineage. This subsection applies only to escheated property and shall cease to be effective for proceedings filed after December 31, 2004.

§ 732.103, Fla. Stat. (2022). "Kindred" is not defined in the general definitions provision of the Probate Code or in the provisions related to intestate succession. *See* §§ 731.201, 732.101.-.111, Fla. Stat. (2022).

Pursuant to section 732.103's plain language, persons who have greatgrandparents in common

with a decedent but who otherwise have no familial relationship with a decedent are not in a class of persons recognized as heirs of an intestate decedent's estate. No recited category applicable here encompasses such relatives.[2] Where a decedent was never married, heirs are limited to the decedent's descendants; parents; siblings and, if they are deceased, their descendants; grandparents; and aunts and uncles and, if they are deceased, their descendants. Such a limitation has been referred to as the "laughing heir" rule, as "[i]t eliminates inheritance by persons so remotely related to the decedent that they suffer no sense of loss, only gain, at the news of the decedent's death." Michael D. Simon, et al., *Litigation Under Florida Probate Code*, § 2.3C. (13th ed. 2023).

In support of its position that Mills, Barter, Jr., and Luce are heirs under section 732.103, the appellee, the Estate of Kyle William Bruening ("estate"), relies on language in subsection 732.103(4)(c): "If there is either no paternal kindred or no maternal kindred, the estate shall go to the other kindred who survive, in the order stated above." But that language, read in the context of all other provisions of section 732.103(4), provides for a scenario in which only paternal grandparents, aunts, or uncles exist, or a scenario in which only maternal grandparents, aunts, or uncles exist. In those instances, the remaining estate that would have gone to identified paternal kindred or maternal kindred does not escheat to the state. Rather, the entirety goes to the persons identified in subsection 732.103(4)(a)-(b), in the order provided. *See Estate of Faskowitz*, 941 So.2d 390, 392 (Fla. 2d DCA 2006) (holding that pursuant to section 732.103(4)(c), "in the absence of any maternal kindred of Irving Faskowitz, his paternal kindred . . . are entitled to inherit the whole estate").

The estate also relies on the Probate Code's definition of "collateral heir". Although section 732.104, Florida Statutes (2022), provides that "[d]escent shall be per stirpes, whether to descendants or to collateral heirs," and "collateral heir" is defined in section 731.201(6) to encompass



those who share a "common ancestor" with the decedent, neither section 732.104 nor section 731.201 operate to identify heirs of intestate estates. Section 732.103 does that, and the only collateral heirs identified as heirs in section 732.103 are siblings, aunts and uncles, and - only under circumstances recited in subsection 732.103(6) that are clearly inapplicable here - descendants of the decedent's great-grandparents.

Finally, the estate argues "[i]f the . . . legislature wanted to limit heirship, it could have adopted the Uniform Probate Code, as many states have, making it clear where heirs and beneficiaries ended." Likewise, the estate argues other states have clearly excluded descendants of a decedent's great-grandparents as heirs. Be that as it may, whatever the Uniform Probate Code and probate codes of other states provide, section 732.103 leaves no question that persons who share common greatgrandparents with a decedent but who otherwise have no familial relation to the decedent are not recognized as heirs of a decedent's intestate estate.

Reversed.

MAY and ARTAU, JJ., concur.

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Notes:

[1] Although the parties dispute whether sufficient evidence existed of Luce's familial relationship with the decedent, we need not reach that issue. Even if Luce is related to the decedent based only on sharing common greatgrandparents with the decedent, this does not make her an heir under section 732.103, Florida Statutes (2022), as we explain further in this opinion.

[2] Subsection 732.103(6) was not relied on by the relatives and is not applicable in any event, as the proceedings here were filed after 2004.

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