

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 18, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2024AP1043

Cir. Ct. No. 2022PR33

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE ESTATE OF ERROL T. DOERR:

**DENISE DOERR, PERSONAL REPRESENTATIVE OF THE ESTATE OF
ERROL T. DOERR,**

APPELLANT,

V.

KALEB A. DOERR,

RESPONDENT.

APPEAL from an order of the circuit court for Buffalo County:
THOMAS W. CLARK, Judge. *Reversed and cause remanded with directions.*

Before Stark, P.J., Hruz, and Gill, JJ.

¶1 HRUZ, J. Denise Doerr, as personal representative of the Estate of Errol Doerr, appeals an order regarding the distribution of portions of Errol's estate.¹ Specifically, Denise, who was Errol's spouse at the time of his death, argues that the circuit court erroneously interpreted WIS. STAT. § 852.01(1) (2023-24),² by concluding that the share of Errol's estate that did not pass to Denise passed only to Kaleb Doerr, Errol's son from a prior relationship, rather than passing equally to Kaleb and to Errol's three other children. Denise also argues that the court erred by ordering her: (1) to pay only Kaleb for Errol's interest in the home she elected to take under WIS. STAT. § 861.21; and (2) to sell the remaining marital property and pay half of the proceeds to only Kaleb.

¶2 We conclude that the plain language of WIS. STAT. § 852.01(1) requires the share of a decedent's estate that does not pass to a surviving spouse under § 852.01(1)(a) to pass to all of the decedent's issue and be divided equally among them. In this case, the issue include all four of Errol's children, not just Kaleb. We also conclude that WIS. STAT. § 861.21 does not give the circuit court the authority to order Denise to sell the remaining marital property because Denise retains her one-half interest in the remaining marital property and each of Errol's children also shares an interest in that property. *See* WIS. STAT. §§ 861.01(1), 852.01(1)(b). All interest-holders in that property have the right to decide what to do with that property.

¹ Because the parties and their family members share a surname, we will refer to them using their first names.

² All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

¶3 Accordingly, we reverse the circuit court’s order directing Denise to pay only Kaleb for Errol’s interest in the home she elected to take under WIS. STAT. § 861.21, and we remand for the court to order that payment be divided equally among Errol’s four children. We also reverse that part of the court’s order directing Denise to sell the remaining marital property, and we remand for the court to order that each of Errol’s children shares an interest with Denise in that property.

BACKGROUND

¶4 Errol and Denise were married in 2005, and they had three children together, Anna, Emma and Samantha. Errol also had a child from a previous relationship, Kaleb. On August 10, 2022, Errol died in an automobile accident, which also seriously injured Denise and one of their daughters. At the time of Errol’s death, Errol and Denise resided in a home on Piepers Valley Road in Fountain City, Wisconsin (the “Piepers Valley Property”).

¶5 On August 22, 2022, Kaleb filed an application for the informal administration of Errol’s estate, noting that Errol died intestate, and nominating himself as the Estate’s personal representative. Kaleb also filed a waiver and consent form signed by Denise, in which she consented to Kaleb’s appointment as the Estate’s personal representative. In a later filing, Denise averred that she did not sign the form; rather, her sister had done so without Denise’s authority.

¶6 Domiciliary letters were issued to Kaleb, but those letters were modified and issued to both Kaleb and Denise on September 23, 2022, after Kaleb filed an amended application for informal administration nominating both of them as co-personal representatives of the Estate. On December 16, 2022, Kaleb

resigned as co-personal representative, and domiciliary letters were subsequently issued to Denise.³

¶7 On April 10, 2023, Denise petitioned, pursuant to WIS. STAT. § 861.21(2), that the Piepers Valley Property be distributed to her as marital property.⁴ She requested that the circuit court find good cause to extend the time for filing her petition, given that it had been filed more than six months after Errol's death. *See id.* She explained that Kaleb initiated probate proceedings without her knowledge, that she remained in the hospital for care related to the accident until September 2022, and that she was unable to fully participate in the proceedings until December 2022. Denise also made a demand for formal proceedings to resolve her petition.

¶8 In response, Kaleb filed a petition to remove Denise as the Estate's personal representative, to appoint an independent third party as the personal representative, and to deny Denise's WIS. STAT. § 861.21 petition. Kaleb argued that Denise, as the Estate's personal representative, acted contrary to the Estate's interests by filing her petition to take assets from the Estate in violation of a 2005 premarital agreement made between Errol and Denise. He also argued that Denise waived her right to make an election under § 861.21, given the 2005 premarital agreement. Because Errol purchased the Piepers Valley Property (albeit during his marriage with Denise) and it was titled only in his name, Kaleb

³ At the time of the probate proceedings, Anna, Emma and Samantha were minors, and after Kaleb resigned as co-personal representative, a guardian ad litem was appointed to represent the three minor children in the proceedings.

⁴ Denise also petitioned that certain items of personal property be transferred to her pursuant to WIS. STAT. § 861.33(1)(a). Because these items are not at issue in this appeal, we do not discuss them further.

contended that, under the 2005 premarital agreement, the property was not marital property.

¶9 The circuit court granted the demand for formal proceedings; scheduled an evidentiary hearing on Kaleb’s petition to remove Denise as the personal representative, the enforceability of the 2005 premarital agreement, and whether that agreement had been revoked; and allowed Denise to remain as the Estate’s personal representative, but with limited powers. Following the evidentiary hearing, the court denied Kaleb’s petition to remove Denise as the Estate’s personal representative, and it concluded that the 2005 premarital agreement was invalid. The court did not rule on Denise’s WIS. STAT. § 861.21 petition.

¶10 Kaleb then moved for a declaration regarding the distribution of Errol’s estate pursuant to the intestacy statutes in WIS. STAT. ch. 852. Kaleb contended that he, but not his three half-siblings, was entitled to Errol’s half of the marital property and the remaining nonmarital property that did not pass to Denise and that the only property he shared on an equal basis with his half-siblings was Errol’s individual property. Kaleb also requested that the portion of the Piepers Valley Property considered to be the “[h]ome” under WIS. STAT. § 861.21(1)(b) be parceled out from the rest of the property and that Denise pay the Estate for Errol’s share of the home. In response, Denise asserted that the property Kaleb argued passed only to him should pass equally to all four of Errol’s children.

¶11 The Piepers Valley Property was appraised and valued at \$1,150,000. According to the appraisal, the property consists of four tax parcels totaling 159.4 acres and each parcel “could be sold individually if legal access was provided.” Parcel No. 006-00475-0000 (“Parcel 1”), Parcel No. 006-00476-0000

(“Parcel 3”), and Parcel No. 006-00477-0000 (“Parcel 4”),⁵ each valued at \$200,000, do not contain any buildings. Parcel No. 006-00473-0000 (“Parcel 2”), valued at \$550,000, contains buildings, including the house, garage, and some pole sheds.

¶12 After briefing from the parties, the circuit court, in an oral ruling, concluded that Denise made a valid election to receive the Piepers Valley Property, pursuant to WIS. STAT. § 861.21(2), but that the assignment of Errol’s interest in that property was contingent upon her paying Kaleb “the value of Errol’s interest in the home that does not pass to the surviving spouse under intestacy.” The court also set off Parcel 2 as “the [h]ome” under § 861.21(1)(b) and awarded it to Denise provided that she paid Kaleb \$275,000 for Errol’s interest in the home. As for Parcels 1, 3 and 4, the court ordered that they “be set for sale and the proceeds divided” as provided in WIS. STAT. § 852.01(1)(a)2. Because the Piepers Valley Property was marital property, the court concluded that 50% of the proceeds from the sale of those parcels would go only to Kaleb under § 852.01(1)(b). The court also ordered the parties to agree on “the mechanism of sale” and to “jointly determine how to provide access” to the remaining three parcels.

¶13 The circuit court subsequently issued a written order consistent with its ruling. Denise appeals.

⁵ The addendum noting the value of each parcel erroneously lists Parcel 4 as Parcel No. 006-00473-0000.

DISCUSSION

¶14 On appeal, Denise challenges the circuit court’s interpretation and application of WIS. STAT. § 852.01(1) to the distribution of Errol’s estate. She also challenges the court’s order directing her to pay \$275,000 to Kaleb only for Parcel 2, and to sell the remaining three parcels under WIS. STAT. § 861.21 and pay half of the proceeds to only Kaleb as well.

¶15 The interpretation of statutes and the application of those statutes to a set of facts are questions of law that we review de novo. *See Droukas v. Estate of Felhofer*, 2014 WI App 6, ¶11, 352 Wis. 2d 380, 843 N.W.2d 57 (2013). When interpreting a statute, our review begins with the statutory language, which is given “its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. If this process results in “a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted).

I. WISCONSIN STAT. § 852.01(1)

¶16 Denise argues that the circuit court erred by concluding that only Kaleb was entitled to 50% of the share of Errol’s estate because the term “issue” in WIS. STAT. § 852.01(1)(b) refers to all issue of a decedent, thereby including Kaleb *and* his three half-siblings. Because Errol’s issue include Kaleb and his three half-siblings, Denise asserts that each is entitled to a 25% “per stirpes” share

of the estate shares not passing to her. In contrast, Kaleb argues that Denise is entitled to half of the marital and nonmarital property and Kaleb is entitled to the remaining half because the language in § 852.01(1)(a)2. provides that the portion of a decedent's estate that does not pass to the surviving spouse passes only to a decedent's issue from a prior relationship.

¶17 We agree with Denise and conclude that the circuit court erred by accepting Kaleb's interpretation. The plain language of WIS. STAT. § 852.01(1)(b) clearly states that the share of a decedent's estate that does not pass to the surviving spouse under § 852.01(1)(a) passes to *all* of the decedent's issue and is divided equally among the issue. Contrary to Kaleb's argument regarding—as well as the circuit court's application of—§ 852.01(1)(a)2., all that provision does is set the surviving spouse's share of the net estate at one-half of the decedent's property, subject to two exceptions enumerated in § 852.01(1)(a)2.a. and b. Kaleb reads the provision without considering the entirety of § 852.01(1), which sets forth the rules of intestate succession.

¶18 Pursuant to WIS. STAT. § 852.01(1), when a decedent dies intestate, his or her “net estate” passes to his or her surviving heirs. An “[h]eir” includes “any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent.” WIS. STAT. § 851.09. The “[n]et estate” includes “all property subject to administration less the property selected by the surviving spouse ... under [WIS. STAT. §] 861.33, the allowances made by the court ..., administration, funeral and burial expenses, the amount of claims paid and federal and state estate taxes payable out of such property.” WIS. STAT. § 851.17. As to marital property, a “surviving spouse retains his or her undivided one-half interest in each item of marital property,” and that one-half interest is not subject to administration. WIS. STAT. § 861.01(1).

¶19 WISCONSIN STAT. § 852.01(1)(a) and (b) provide for the division of the net estate and the decedent’s one-half interest in marital property when the decedent’s heirs include a surviving spouse and surviving issue. The term “issue” includes in its definition a decedent’s children. WIS. STAT. § 851.13. As discussed below, a decedent’s entire estate passes to the surviving spouse if the decedent has no surviving issue or “if the surviving issue are all issue of the surviving spouse ... and the decedent.” Sec. 852.01(1)(a)1. That result would accomplish the entirety of the intestate succession.

¶20 If, as in this case, “there are surviving issue one or more of whom are not issue of the surviving spouse,” one-half of the decedent’s property, other than the decedent’s interest in marital property and “property held equally and exclusively with the surviving spouse ... as tenants in common,” passes to the surviving spouse. WIS. STAT. § 852.01(1)(a)2.a.-b. The share of the estate that does not pass to the spouse under § 852.01(1)(a) passes to the decedent’s issue, per stirpes. Sec. 852.01(1)(b). A per stirpes distribution means that “the property is divided into equal shares for” the decedent’s surviving children and “[e]ach surviving child ... [is] allocated one share.” WIS. STAT. §§ 852.03(1), 854.04(1)(a).

¶21 Here, Errol’s surviving heirs include Denise and all four of Errol’s children—Kaleb, Anna, Emma and Samantha. Pursuant to WIS. STAT. § 852.01(1)(a)2., one-half of Errol’s estate, excluding his interest in marital property, passes to Denise. The share of Errol’s estate that does not pass to Denise, including Errol’s interest in marital property, passes to his issue per stirpes pursuant to § 852.01(1)(b). Thus, under a plain reading of § 852.01(1), the remaining share of Errol’s estate, which Kaleb claims passes only to him, instead passes to all four of Errol’s children and is divided among them in equal shares.

¶22 There is nothing in the language of WIS. STAT. § 852.01(1)(a) or (b) supporting Kaleb’s interpretation that a surviving spouse’s “children are still not entitled to inherit if the spouse is eligible to inherit.” Kaleb reads § 852.01(1)(a)2. as establishing that if “there are surviving issue one or more of whom are not issue of the surviving spouse,” then the issue who are only of the decedent—here, Kaleb—automatically receive the entire other half of the estate not going to the surviving spouse—here, Denise. But neither that statute nor § 852.01(1)(b) says any such thing.

¶23 Rather, the one-half spousal share in WIS. STAT. § 852.01(1)(a)2. results when § 852.01(1)(a)1. does not apply—i.e., when it is not the case that either there are no surviving issue of the decedent or all of the surviving issue are children born between the decedent and the surviving spouse. In either of those scenarios, the surviving spouse receives the entire estate. Given that result, there obviously is no “share of the estate not passing to the spouse ..., under par. (a),” such that there is reason to apply § 852.01(1)(b) at all. As noted above, all that § 852.01(1)(a)2. does is set the surviving spouse’s share of the net estate at one-half of the decedent’s property, subject to two exceptions, when there are “surviving issue one or more of whom are not issue of the surviving spouse.” In short, § 852.01(1)(a)1. and 2. simply provide what portion of the net estate passes to the surviving spouse depending on whether the decedent has surviving issue, but the statute says nothing about what portion of the estate goes to the issue, which is addressed by § 852.01(1)(b).

¶24 The phrase “the issue,” as used in WIS. STAT. § 852.01(1)(b), is broadly characterized and not limited to any one type of “issue.” When read plainly, it means *all* of a decedent’s issue, including children that the decedent had with someone other than the surviving spouse and those the decedent had with the

surviving spouse. Indeed, that is how “the issue” would be defined in, and applied by, § 852.01(1)(b) to accomplish intestate succession if there were no surviving spouse at all. Namely, the four children would all get equal, “per stirpes” shares of the estate, irrespective of who was or was not the child of both spouses. Kaleb offers no rationale explaining why the other three children would be omitted entirely from receiving estate shares under the facts of this case but then included in such shares if both Errol and Denise were deceased. Our interpretation faithfully applies all the language in § 852.01(1)(a)1. and 2., which provide for the distribution of a decedent’s estate depending on whether the decedent has no issue, has issue with only the surviving spouse, or has issue with someone other than the surviving spouse and with the surviving spouse.

¶25 Kaleb argues that *Carroll v. Ansley*, 2001 WI App 120, 244 Wis. 2d 280, 628 N.W.2d 411, supports his interpretation of WIS. STAT. § 852.01(1)(b). He contends that the facts in this case are identical to those in *Carroll* and warrant the same result. *Carroll*, however, did not address the division of estate shares among a decedent’s children from two separate marriages or relationships, one of which included the surviving spouse.

¶26 Rather, in *Carroll*, the decedent was survived by her spouse, with whom she did not have any children, and by two children from a previous marriage. *Carroll*, 244 Wis. 2d 280, ¶2. All of the property in the decedent’s estate was marital property, and the surviving spouse retained his half of the marital property. *Id.* Just as we have done above, we applied WIS. STAT.

§ 852.01(1)(a)-(b) (1999-2000)⁶ to conclude that the surviving spouse was entitled to one-half of the decedent’s nonmarital property and that the decedent’s two children from her previous marriage were entitled to the remaining property in the estate. **Carroll**, 244 Wis. 2d 280, ¶7. Because all of the decedent’s property was marital property, we held that the decedent’s entire estate passed to her two children—i.e., the decedent’s issue—and was divided between them in equal shares. *Id.*

¶27 Similarly, here, by operation of WIS. STAT. § 852.01(1)(a)2., Denise receives one-half of the nonmarital property in Errol’s estate and, by operation of § 852.01(1)(b), Errol’s children receive an equal share of the remaining half of Errol’s estate, which includes marital and nonmarital property. The features that distinguish **Carroll** from this case—and the reason it does not support Kaleb’s interpretation—are that the surviving spouse in **Carroll** had no issue with the decedent, and the only property subject to administration was the decedent’s marital property to which the surviving spouse was not entitled under § 852.01(1)(a)2. (1999-2000). By operation of § 852.01(1)(b) (1999-2000), that property went to the decedent’s children from her prior marriage. Thus, **Carroll** does not stand for the proposition that the remaining half of a decedent’s estate passes only to issue from a prior relationship. Rather, **Carroll** applied

⁶ WISCONSIN STAT. § 852.01(1) has not substantially changed since our decision in **Carroll v. Ansley**, 2001 WI App 120, 244 Wis. 2d 280, 628 N.W.2d 411. The version of § 852.01(1) (1999-2000) that we applied in **Carroll** did not include the term “surviving domestic partner” or the provision in § 852.01(1)(a)2.b. excepting from the property that passes to the surviving spouse a “decedent’s interest in property held equally and exclusively with the surviving spouse or surviving domestic partner as tenants in common,” both of which are part of the current version of the statute.

§ 852.01(1)(a) and (b) (1999-2000) to the particular facts of that case, just as we apply the current statute to the facts of this case.

¶28 The circuit court therefore erred by concluding that the remaining half of Errol’s estate that does not pass to Denise passes only to Kaleb. Accordingly, we reverse and remand for the court to order that all four children—Kaleb, Anna, Emma and Samantha—share equally in the portion of Errol’s estate that does not pass to Denise under WIS. STAT. § 852.01(1)(a).

II. The Piepers Valley Property

¶29 Denise also argues that the circuit court erred by ordering her to sell Parcels 1, 3 and 4 of the Piepers Valley Property. The court erred, she says, because after Denise made her election pursuant to WIS. STAT. § 861.21(2), the marital property was no longer Estate property. She contends that the court had no authority to order her to sell her interest in those parcels or grant any easement rights in those parcels. Kaleb argues that a “surviving spouse should not be able to hold in excess of what is typically deemed a home to the detriment of heirs” and that Denise is required “to pay for the share of the property belonging to [the] decedent’s heir” regardless of the land that the court severed.

¶30 If an intestate estate “includes an interest in a home, assignment of that interest to the surviving spouse ... is governed by” WIS. STAT. § 861.21. WIS. STAT. § 852.09. Under § 861.21(2), a decedent’s “entire interest in the home shall be assigned to the surviving spouse” if the surviving spouse petitions the court “requesting such a distribution and if a governing instrument does not provide a specific transfer of the decedent’s interest in the home to someone other than the surviving spouse.” A “[h]ome” is defined as “any dwelling in which the decedent had an interest and that at the time of the decedent’s death the surviving

spouse ... occupies or intends to occupy.” Sec. 861.21(1)(b). The “[h]ome” includes a house and “all of the surrounding land, unless the court sets off part of the land as severable from the remaining land under” § 861.21(5). Sec. 861.21(1)(b).

¶31 The circuit court assigns the decedent’s interest in the home to the surviving spouse “upon payment of the value of the decedent’s interest in the home that does not pass to the surviving spouse ... under intestacy.” WIS. STAT. § 861.21(4). “Payment shall be made to the fiduciary holding title to the interest.” *Id.* If an interested person files a petition stating that “part of the land is not necessary for dwelling purposes and that it would be inappropriate to assign all of the surrounding land as the home under” § 861.21(2),⁷ “the court may set off for the home as much of the land as is necessary for a dwelling.” Sec. 861.21(5). When making its determination, “the court shall take into account the use and marketability of the parcels set off as the home and the remaining land.” *Id.*

¶32 Here, Denise petitioned the circuit court to assign to her Errol’s interest in the Piepers Valley Property. Kaleb, as one of Errol’s heirs, petitioned the court to set off only a portion of the property as the home. There is no dispute as to the severance of the Piepers Valley Property into four parcels pursuant to WIS. STAT. § 861.21(5). The court then assigned Errol’s interest in Parcel 2, the home valued at \$550,000, to Denise. Because the Piepers Valley Property is marital property, Errol’s interest in the home does not pass to Denise under WIS. STAT. § 852.01(1)(a)2.a., and the court required Denise to pay \$275,000 for Errol’s interest in Parcel 2. See § 861.21(4).

⁷ An interested person includes a decedent’s heir. WIS. STAT. § 851.21(1)(a).

¶33 The circuit court erred, however, by concluding that the \$275,000 had to be paid to Kaleb alone. Given our conclusion above, the \$275,000 must be paid to Errol’s four children and be divided equally among them pursuant to WIS. STAT. § 852.01(1)(b). As for Parcels 1, 3 and 4, we also note that the court did not order Denise to “grant” easement rights for those parcels but simply ordered the parties to reach an agreement on “how to provide access” to those parcels.

¶34 Nevertheless, we conclude that WIS. STAT. § 861.21 does not give the circuit court the authority to order Denise to sell those parcels severed from the land set off from the home or to do anything with those parcels. In fact, such a result would fail to account for Denise’s continued interest in the severed parcels following intestate succession of Errol’s estate. Because the Piepers Valley Property is marital property, Denise retains an undivided one-half interest in the remaining three parcels. See WIS. STAT. § 861.01(1). What is more, Errol’s one-half interest in those three parcels passes in equal shares to his four children, thereby sharing in that interest with Denise. See WIS. STAT. § 852.01(1)(b). Because Denise retains her one-half interest in the three parcels and that interest is not subject to administration, the court erred by ordering Denise to sell Parcels 1, 3 and 4. See § 861.01(1). She and the four children each retain a right to decide what to do with those parcels.

¶35 Accordingly, we reverse the circuit court’s order directing Denise to pay \$275,000 to Kaleb only for Parcel 2 and directing her to sell Parcels 1, 3 and 4. We remand with directions for the court to order that the \$275,000 payment be divided equally among Errol’s four children, and that each of the four children be assigned an equal interest in those parcels.

By the Court.—Order reversed and cause remanded with directions.

Recommended for publication in the official reports.

