

2017

ESTATE LAW-Summary Distribution of Small Estates: In re Estate of Coborn

Jennie Boulerice

Follow this and additional works at: <http://repository.uwyo.edu/wlr>



Part of the [Law Commons](#)

Recommended Citation

Jennie Boulerice, *ESTATE LAW-Summary Distribution of Small Estates: In re Estate of Coborn*, 17 WYO. L. REV. 59 (2016).
Available at: <http://repository.uwyo.edu/wlr/vol17/iss1/4>

This Case Notes is brought to you for free and open access by Wyoming Scholars Repository. It has been accepted for inclusion in Wyoming Law Review by an authorized editor of Wyoming Scholars Repository. For more information, please contact scholcom@uwyo.edu.

CASE NOTE

**ESTATE LAW—Summary Distribution of Small Estates:
In re Estate of Coborn**

*Jennie Boulerice**

I.	INTRODUCTION	59
II.	BACKGROUND	61
	<i>A. Probate Proceedings and Summary Distribution Statutes</i>	61
	<i>B. Wyoming Rules Regarding Expository Legislation, Retroactive Application of Statutes, and Statutory Interpretation</i>	64
	<i>C. Split Estates</i>	66
III.	PRINCIPLE CASE.....	66
IV.	ANALYSIS.....	68
	<i>A. The Court's Holding was Correct</i>	68
	<i>B. Likely Effect on Estate Distribution in Practice</i>	73
V.	CONCLUSION	75

I. INTRODUCTION

While United States law clearly recognizes the principle of testamentary freedom, there are laws governing the distribution of the decedent's property.¹ State statutes govern the distribution of property during probate succession.² These statutes regulate topics such as proceeding requirements and compensation for attorneys.³ Probate procedures are often "costly and time consuming."⁴ Fortunately, probate proceeding requirements typically have a range of formality that corresponds to the complexity of estates.⁵ While formal probate proceedings have benefits, when the estate is relatively simple and the value of the estate is low, the costs and delay of formal probate administration outweigh the advantages.⁶ To address the discrepancy between relative costs, delay, and advantages, some states have adopted statutes that allow summary distribution of small estates, which

* J.D. candidate, University of Wyoming College of Law, Class of 2018. Thanks to Professor Mark Glover for his feedback and suggestions.

¹ THOMPSON ON REAL PROPERTY, SECOND THOMAS EDITION §88.13(d)(3)(i) (David A. Thomas, ed., 2d ed. 2015).

² *Id.*

³ *Id.* at § 88.13(a).

⁴ *Id.* at § 88.13(d)(3)(i).

⁵ *Id.* at § 88.13(a).

⁶ *Id.*

make typical formal probate proceedings unnecessary.⁷ Wyoming is one such state that has adopted a summary distribution statute.⁸

In *In re Estate of Coborn*, the Wyoming Supreme Court addressed whether the state summary distribution statute, Wyoming Statute § 2-1-205, authorized the Laramie County District Court to order summary distribution of real property located in other Wyoming counties.⁹ This case offered the first opportunity for the court to interpret the newly amended statute as it applies to the process for distribution of small estates with assets located in multiple counties.¹⁰ The court previously only addressed summary distribution of a small estates with all assets located in the same county.¹¹ In the principle case, the Wyoming Supreme Court held the district court erred in concluding that the statute did not authorize the district court to order summary distribution of real property located in other Wyoming counties.¹²

This case note argues that the Wyoming Supreme Court was correct in holding that Wyoming Statute § 2-1-205 authorized a district court to order summary distribution of real property located in other Wyoming counties based on the court's expository legislation reasoning and policy reasons.¹³ The background section begins with a brief overview of estate succession and an explanation and history of the relevant statute, Wyoming Statute § 2-1-205.¹⁴ Additionally, the background section discusses the legal theories that the Wyoming Supreme Court relied on to reach its conclusion.¹⁵ This section also offers a brief overview of relevant legal principles, such as split estates.¹⁶ The principle case section discusses the facts, procedural history, the court's reasoning, and the holding of *In re Estate of Coborn*.¹⁷ The analysis section explains why the court was correct in its holding with respect to the expository legislation reasoning and policy reasons.¹⁸ Finally, the case note explains a few likely implications of the court's decision for estate distribution in practice.¹⁹

⁷ POWELL ON REAL PROPERTY § 85.18(5) (Michael Allan Wolf ed., 2015).

⁸ WYO. STAT. ANN. § 2-1-205 (2016).

⁹ *In re Estate of Coborn*, 2015 WY 89, ¶ 2, 352 P.3d 271, 272 (Wyo. 2015).

¹⁰ *Id.* at ¶ 8, 352 P.3d at 273–74.

¹¹ See generally *Mathewson v. Estate of Nielsen* (*In re Estate of Nielsen*), 2011 WY 71, 252 P.3d 958 (Wyo. 2011).

¹² *In re Estate of Coborn*, at ¶ 10, 352 P.3d at 274.

¹³ See *infra* notes 102–142 and accompanying text.

¹⁴ See *infra* notes 20–80 and accompanying text.

¹⁵ See *infra* notes 20–80 and accompanying text.

¹⁶ See *infra* notes 20–80 and accompanying text.

¹⁷ See *infra* notes 81–101 and accompanying text.

¹⁸ See *infra* notes 102–142 and accompanying text.

¹⁹ See *infra* notes 143–153 and accompanying text.

II. BACKGROUND

This section provides a brief overview of the law related to succession, an abbreviated history and explanation of the Wyoming summary distribution statute, and a synopsis of the primary legal concepts related to the principle case. The legal issue presented *In re Estate of Coborn* involves the transfer of property at death.²⁰ This process is known as succession.²¹ There are generally two broad categories of succession: probate succession and non-probate succession.²² Probate succession governs the estates of testate decedents, people that pass away with a valid will, and intestate decedents, people that pass away without a valid will.²³

Non-probate succession examples, also known as will-substitutes, include inter vivos trusts and pay-on-death contracts.²⁴ However, probate succession, which involves the judicial process of proving a will or distributing an intestate decedent's property, is expensive and time consuming.²⁵ Accordingly, many individuals may prefer non-probate succession because the advantages include reducing time and money necessary to distribute property after death.²⁶ Although non-probate alternatives are available, they require the decedent to expend time and money prior to death during the estate planning process.²⁷

A. Probate Proceedings and Summary Distribution Statutes

Probate succession includes the judicial process of proving a will and distributing an intestate decedent's property.²⁸ Wyoming has its own statutory requirements regarding probate succession procedures.²⁹ These statutes provide

²⁰ *In re Estate of Coborn*, 2015 WY 89, ¶ 2, 352 P.3d 271, 272 (Wyo. 2015).

²¹ Jesse Dukeminier & Robert H. Sitkoff, *WILLS, TRUSTS, AND ESTATES* 1 (9th ed. 2013).

²² *Id.*

²³ *Id.* at 63.

²⁴ *Id.* at 64.

²⁵ *Id.*, *Contra* David Horton, *In Partial Defense of Probate: Evidence from Alameda County, California*, 103 *GEO. L.J.* 605, 639–43 (2015) (arguing that the widely held idea that probate is expensive and time consuming is incorrect). Given the limitations that Professor Horton acknowledges and the lack of further research available in this area the author of this case note is reluctant to abandon the widely held view that probate is expensive and time consuming. Professor Horton acknowledges that his study may not be generalizable. *Id.* at 626. One key reason for this lack of generalizability is that California operates as a community property jurisdiction, which allows a non-probate shortcut for the estates of married decedents. *Id.* Accordingly, until scholars conduct further research to bolster Horton's conclusions, this case note operates under the majority proposition that probate is expensive and time consuming.

²⁶ Dukeminier & Sitkoff, *supra* note 21, at 64.

²⁷ *Id.*

²⁸ Jeffrey A. Schoenblum, *PAGE ON WILLS* § 26.3 (2015).

²⁹ *See* WYO. STAT. ANN. §§ 2-7-201, 804.

guidance for issues such as notice protections for creditors and potential distributees, compensation amounts for attorneys, and filing requirements.³⁰ Usually, the law of the state in which the decedent's property is located determines how property is distributed and the corresponding required distribution proceedings.³¹

State specific statutory probate proceedings apply to a decedent's estate when he or she passes away testate or intestate.³² When a decedent dies intestate, the statutory default probate requirements apply.³³ Usually statutes require more formal proceedings when the estate is more complex.³⁴ The formal administration procedures lead to costs and delay, which result in widespread criticism and frustration with probate proceedings.³⁵

Despite criticism of probate proceedings, these procedures serve important purposes, including resolving disputes, clearing title to property, and creditor protection.³⁶ As the traditional family unit becomes more fractured and non-traditional distributions increase, conflict surrounding succession increases.³⁷ Formal proceedings also offer a clear path for the estate administrator to sell the estate's real property with clear title.³⁸ This is important because the administrator may have to sell estate property to satisfy debts, pay taxes, or divide estate value among multiple beneficiaries.³⁹ Court supervision ensures that the administrator's sale and division of property is executed properly.⁴⁰ Finally, creditors utilize the probate process to collect debts from the estate.⁴¹ Overall, formal probate procedures are necessary to properly regulate large and complex estates.⁴² States have a policy interest in preventing improper administration of estates.⁴³

³⁰ See WYO. STAT. ANN. §§ 2-7-201, 804.

³¹ Dukeminier & Sitkoff, *supra* note 21, at 66.

³² *Id.* at 1.

³³ *Id.* at 64–65.

³⁴ THOMPSON ON REAL PROPERTY, *supra* note 1, at § 88.13(d)(3)(i).

³⁵ *Id.* at § 88.13(d)(3)(ii).

³⁶ David Horton, In Partial Defense of Probate: Evidence from Alameda County, California, 103 GEO. L.J. 605, 628–39 (2015).

³⁷ *Id.* at 629–635.

³⁸ *Id.* at 639.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 636–637.

⁴² Richard M. Morton, *The Second Legal Assistance Symposium—Part IV: Estate Law: Non-Probate and Probate Administration of Small Estates Involving Deaths of Military Personnel: Thoughts of a Probate Judge*, 112 MIL. L. REV. 175, 175 (1986).

⁴³ Joseph M. Blumberg, *51 Flavors: A Survey of Small Estate Procedures Across the Country*, 28 PROBATE & PROPERTY 31, 33 (2014).

However, the costly and time-consuming nature of formal administration outweighs its advantages when the estate is relatively simple and the value of the estate is low.⁴⁴ With a relatively simple estate, less formal proceedings are more desirable and advantageous in terms of reduced cost and time.⁴⁵ Many states recognize this and accordingly have statutes that allow summary distribution of small estates, which allow the estate to avoid formal probate proceedings.⁴⁶ For example, in Missouri, if the value of the entire estate does not exceed forty thousand dollars and meets other various stipulations, the decedent's estate is eligible for an abbreviated administrative proceeding.⁴⁷

Montana also allows a summary administrative procedure for small estates.⁴⁸ The Montana Legislature justified the summary procedure in the official comments included in the legislation of the related statutes:

Figures gleaned from a recent authoritative report of a major survey of probated estates in Cleveland, Ohio, demonstrate that more than one-half of all estates in probate had a gross value of less than \$15,000. This means that the principal measure of the relevance of any legislation dealing with probate procedures is to be found in its impact on very small and moderate sized estates. Here is the area where probate affects most people.⁴⁹

Montana's legislature explicitly acknowledged that small estates make up a large percentage of estates in probate.⁵⁰ Given the large number of small estates, the Montana and Missouri statutes demonstrate how and why a small estate becomes eligible for summary distribution.⁵¹

Wyoming's summary distribution statute is Wyoming Statute § 2-1-205.⁵² In 2014, when the Laramie County District Court decided the principle case, § 2-1-205(a) read:

If any person dies who is the owner of personal or real property, including mineral interests, but whose entire estate including personal property does not exceed two hundred thousand dollars (\$200,000.00), the person or persons claiming to be the

⁴⁴ THOMPSON ON REAL PROPERTY, *supra* note 1, at § 88.13.

⁴⁵ *Id.*

⁴⁶ POWELL ON REAL PROPERTY, *supra* note 7, at § 85.18.

⁴⁷ MO. REV. STAT. §473.097 (2016).

⁴⁸ MONT. CODE ANN. §72-3-1104 (2016).

⁴⁹ *Id.* at REFS & ANNOS.

⁵⁰ *Id.*

⁵¹ MONT. CODE ANN. §72-3-1104 (2016); MO. REV. STAT. §473.097 (2016).

⁵² WYO. STAT. ANN. § 2-1-205 (2016).

distributees of the decedent may file, not earlier than thirty (30) days after the decedent's death, an application for a decree *in the district court of the county where the property is situated*.⁵³

The subsequent subsections of the statute outline procedures, deadlines, notice requirements, presumptions, and the effect of false statements.⁵⁴

During the 2015 General Legislative Session, the legislature amended subsection (a) to remove the phrase “in the district court of the county where the property is situated” and replaced the phrase with “of summary distribution of property.”⁵⁵ Thus, the current version of subsection (a) reads:

If any person dies who is the owner of personal or real property, including mineral interests, but whose entire estate including personal property does not exceed two hundred thousand dollars (\$200,000.00), less liens and encumbrances, the person or persons claiming to be the distributee or distributees of the decedent may file, not earlier than thirty (30) days after the decedent's death, an application for a decree *of summary distribution of property*.⁵⁶

This 2015 amendment was effective on July 1, 2015, which was after the Wyoming Supreme Court decided the principle case.⁵⁷

B. *Wyoming Rules Regarding Expository Legislation, Retroactive Application of Statutes, and Statutory Interpretation*

The purpose of the amendment was to clarify existing law, which makes it expository.⁵⁸ Expository legislation is a law that is “enacted to explain the meaning of a previously enacted law.”⁵⁹ Wyoming adopted the rule in *In re Pohl* that expository legislation controls over prior, general legislation in the area.⁶⁰ “When expository legislation makes the legislative intent clear there is no need

⁵³ WYO. STAT. ANN. § 2-1-205(a) (2014) (Emphasis added).

⁵⁴ WYO. STAT. ANN. § 2-1-205.

⁵⁵ *In re Estate of Coborn*, 2015 WY 89, ¶ 6–8, 352 P.3d 271, 273 (2015).

⁵⁶ WYO. STAT. ANN. § 2-1-205(a) (2016) (emphasis added)

⁵⁷ *In re Estate of Coborn*, ¶ 6–8, 352 P.3d at 273.

⁵⁸ *Id.* at ¶ 9, 352 P.3d at 273–74.

⁵⁹ *In re Pohl*, 980 P.2d 816, 820 n.2 (Wyo. 1999) (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)), overruled on other grounds by *Torres v. State ex rel. Wyoming Workers' Safety & Comp. Div.*, 2004 WY 92, ¶ 7, 95 P.3d 794, 796 (Wyo. 2004).

⁶⁰ *In re Estate of Coborn*, ¶ 9, 352 P.3d at 274.

for further interpretation of the statute.”⁶¹ The rule that expository legislation controls over prior general legislation in the area is particularly interesting in the principle case because the statute at issue changed from the time the district court made a decision to when the Wyoming Supreme Court considered the appeal.⁶²

In the principle case, the court applied an amended statute to an estate proceeding that the petitioner filed prior to the Wyoming Legislature adopting the amendment to the statute.⁶³ The rule in Wyoming is that a court will not apply a statute retroactively unless there is clear legislative intent for retroactive application.⁶⁴ In *Wyoming Ref. Co. v. Bottjen*, the Wyoming Supreme Court declined to apply a new statute of limitations to a case where the incident occurred prior to the enactment of the new statute.⁶⁵ The court reasoned that even though the facts demonstrated the very type of situation the new statute addressed, there was not a clearly expressed legislative intent for the new statute to apply retroactively.⁶⁶ Given this previous case law, the Wyoming Supreme Court correctly applied the amended summary distribution statute retroactively given the circumstance.⁶⁷

The *In re Estate of Coborn* opinion also applies principles of statutory interpretation.⁶⁸ Statutory interpretation focuses on giving effect to the legislature’s intent.⁶⁹ In order to determine legislative intent, the court first considers the plain and ordinary meaning of language used in the statutes.⁷⁰ If the statute is ambiguous, then the court will use other canons of statutory construction, such as consulting the legislative history and *in pari materia*.⁷¹ In the principle case, the court primarily relied on a plain and ordinary meaning analysis.⁷²

⁶¹ *Id.*

⁶² *See id.* at ¶ 8, 352 P.3d at 273.

⁶³ *Id.*

⁶⁴ *See e.g.*, *Edgcomb v. Lower Valley Power & Light, Inc.*, 922 P.2d 850, 859 (Wyo. 1996); *Wyoming Refining Co. v. Bottjen*, 695 P.2d 647, 650 (Wyo. 1985); *Johnson v. Safeway Stores, Inc.*, 568 P.2d 908, 914–15 (Wyo. 1977).

⁶⁵ *Wyoming Ref. Co. v. Bottjen*, 695 P.2d 647, 650 (Wyo. 1985).

⁶⁶ *Id.*

⁶⁷ *See infra* notes 102–142 and accompanying text.

⁶⁸ *In re Estate of Coborn*, ¶ 5, 352 P.3d at 273.

⁶⁹ *Krenning v. Heart Mountain Irrigation Dist.*, 2009 WY 11, ¶ 9, 200 P.3d 274, 778 (2009).

⁷⁰ *Id.*

⁷¹ *In re Estate of Ronald*, 2014 WY 129, ¶ 13, 336 P.3d 129, 134 (Wyo. 2014).

⁷² *In re Estate of Coborn*, ¶ 9–10, 352 P.3d at 274.

C. *Split Estates*

The principle case also impacts split estates, a prominent concept in western states.⁷³ A landowner, who holds both the surface rights and subsurface rights in land, may convey either the estate in its entirety or only convey the subsurface or the surface rights.⁷⁴ When the owner does not convey the real property in its entirety, the owner creates a split estate.⁷⁵ As a result, Wyoming and other western states have two salient types of real property assets: surface property assets and subsurface property assets.⁷⁶ Since mineral rights often are worth less than surface rights, it is conceivable that a decedent could own mineral rights in several counties, yet have an estate worth less than the \$200,000 threshold.⁷⁷ Ms. Coborn's estate is an example of a small estate that included mineral rights located in several different counties, yet the estate was still worth less than \$200,000.⁷⁸ Split estates are the norm rather than the exception in Wyoming.⁷⁹ Accordingly, it is reasonable to assume that small estates with property located in several different counties are fairly common in Wyoming and the court's holding in the principle case has important implications.

The principle case focuses on interpreting the Wyoming summary distribution statute and involves several legal principles.⁸⁰ As discussed above, the legal principles involved in the case with varying degrees of importance include; expository legislation, applying a statute retroactively, split estates, and statutory interpretation. The following section provides an overview of the principle case.

III. PRINCIPLE CASE

This case deals with the distribution of Elda L. Coborn's estate after she died intestate on March 17, 2014.⁸¹ The property in her estate included a house in Laramie County, Wyoming, mineral interests in Campbell and Johnson Counties, Wyoming, and personal property.⁸² Ms. Coborn's two daughters, Pamela Lynn Copeland and Aubrey Alan Coborn, filed an "Application for Summary Decree of Distribution of Real and Personal Property" in the Laramie County District

⁷³ *In re Estate of Coborn*, ¶ 3, 352 P.3d at 272; Lucas Wallace, *Does a Contractual Right to Receive Production Payments Create a Taxable Ownership Interest in Minerals?*, 13 WYOMING L. REV. 555, 555 (2013).

⁷⁴ 53 AM. JUR. 2D *Mines and Minerals* §15 (2015).

⁷⁵ *Id.*

⁷⁶ Wallace, *supra* note 73, at 555.

⁷⁷ See, e.g. *In re Estate of Coborn*, ¶ 3, 352 P.3d at 272.

⁷⁸ *Id.*

⁷⁹ Wallace, *supra* note 73, at 555.

⁸⁰ *In re Estate of Coborn*, ¶ 5–8, 352 P.3d at 272–73.

⁸¹ *In re Estate of Coborn*, ¶ 3, 352 P.3d at 272.

⁸² *Id.*

Court.⁸³ The two daughters argued that since the entire estate was located in Wyoming, and that its total value did not exceed \$200,000, the estate met the relevant statutory requirements for summary distribution found in Wyoming Statute § 2-1-205.⁸⁴

The district court granted the application in part by distributing the personal property and the real property located in Laramie County.⁸⁵ However, the district court denied the application with respect to the mineral interests in Campbell and Johnson Counties.⁸⁶ The district court determined that the statute did not authorize the court to distribute real property located in other Wyoming counties.⁸⁷

Ms. Coborn's two daughters appealed the partial denial to the Wyoming Supreme Court.⁸⁸ On appeal, the appellants raised the following issue: "[w]hether Wyo. Stat. Ann. § 2-1-205 . . . , which permits a district court to grant summary distribution of small estates, requires Appellants to file a petition for summary distribution in every county in which the decedent's property was located."⁸⁹ The Supreme Court began its analysis by explaining because the issue required interpretation of a statute, the appropriate standard of review was *de novo*.⁹⁰ The court's opinion then stated the language of the original 2014 version of Wyoming Statute § 2-1-205(a), which included the phrase: "the distributees of the decedent may file . . . an application for a decree *in the district court of the county where the property is situated*."⁹¹ The appellants argued it was more consistent with the statutory purpose to allow a district court to order summary distribution of real property throughout Wyoming.⁹²

The Supreme Court briefly reviewed the legislative history of the statute and relevant case law related to expository legislation to give effect to the intent of the statute.⁹³ The court's review included a discussion of the 2015 amendment changes, which removed the phrase, "an application for a decree *in the district court of the county where the property is situated*."⁹⁴ The court stated by removing this

⁸³ *Id.* at ¶ 1–3, 352 P.3d at 272.

⁸⁴ *Id.*

⁸⁵ *Id.* at ¶ 4, 352 P.3d at 272.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at ¶ 1, 352 P.3d at 272.

⁸⁹ *Id.* at ¶ 2, 352 P.3d at 272.

⁹⁰ *Id.* at ¶ 5, 352 P.3d at 273.

⁹¹ *Id.* at ¶ 6, 352 P.3d at 273 (emphasis added).

⁹² *Id.* at ¶ 7, 352 P.3d at 273.

⁹³ *Id.* at ¶ 9, 352 P.3d at 273–74.

⁹⁴ *Id.* at ¶ 8, 352 P.3d at 273.

phrase, the legislature demonstrated its intent that the statute authorizes a district court to order summary distribution of real property throughout Wyoming.⁹⁵

The court stated the legislative history demonstrated that the legislature intended to authorize a district court to order summary distribution of real property throughout Wyoming.⁹⁶ The court recognized the amendment was expository legislation by noting the purpose of the amendment, which was to clarify the existing law.⁹⁷ Given that the amendment was expository legislation, the amendment language controlled the court's decision on the issue.⁹⁸ Accordingly, the court primarily relied on the principles of expository legislation to explain its reasoning.⁹⁹ The court employed Wyoming case law and *Black's Law Dictionary* to explain its application of expository legislation principles.¹⁰⁰ The Wyoming Supreme Court held that the Laramie County District Court erred in ruling that Wyoming Statute § 2-1-205 did not authorize summary distribution of real property located in other Wyoming counties.¹⁰¹ The next section will argue that the court was correct in its holding.

IV. ANALYSIS

A. *The Court's Holding was Correct*

The court was correct when it held that Wyoming Statute § 2-1-205 authorized summary distribution by a district court in one county of real property located in other Wyoming counties due to the principle of expository reasoning and policy reasons. As discussed earlier, the court characterized the 2015 amendment as expository legislation because it replaced the phrase “in the district court of the county where the property is situated” with the phrase “a decree of summary distribution of property.”¹⁰² The legislative history confirmed that the legislation was expository by stating:

This act is intended as a clarification of existing law. The Wyoming legislature intends to make no substantive change to prior law including, but not limited to powers, duties, authorities, obligations, administration, confidentiality, remedies or statutes

⁹⁵ *Id.*

⁹⁶ *Id.* at ¶ 8, 352 P.3d at 273.

⁹⁷ *Id.* at ¶ 9, 352 P.3d at 273–74.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at ¶ 10, 352 P.3d at 274.

¹⁰² See *infra* notes 81–101 and accompanying text.

of limitation. This act is not intended to affect the validity of any rule or regulation promulgated prior to the effective date of this act.¹⁰³

The language in this excerpt explicitly states that the purpose of the amendment was to clarify existing law.¹⁰⁴ The language of the legislation further expressly states that the Legislature did not intend to make any substantive changes to existing law.¹⁰⁵ The combination of these statements provides support for the court's reasoning that the 2015 amendment clarified the existing summary distribution statute and was thus expository legislation.¹⁰⁶

The court was also correct in holding that expository legislation controls over previous legislation.¹⁰⁷ In Wyoming, the general rule is a court will not apply a statute retroactively unless there is clear legislative intent to apply the statute retroactively.¹⁰⁸ However, expository legislation does not seek to change previous law, expository language merely seeks to clarify existing law.¹⁰⁹ The amending legislation explicitly stated that it sought to clarify and not change existing law.¹¹⁰ Accordingly, the court's position that expository legislation rules over previous legislation is in line with this general rule.

The plain and ordinary meaning of the controlling amendment allowed summary distribution of property in other counties by a district court in a different county. While interpreting a statute, courts will first look to the plain and ordinary meaning of the terms in the statute.¹¹¹ The district court ruled that the statute only authorized a district court to order summary distribution for assets located the same county as the court and based this conclusion on its interpretation of the final sentence of the 2014 statute section.¹¹² Prior to the

¹⁰³ S. E. 0111, 2015 Leg., 63rd Sess. (Wyo. 2015).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Brief of Appellants at 15, In re Estate of Coborn*, 2015 WY 89, 352 P.3d 271 (Wyo. 2015) (No. S-14-0315), (“The policy that a remedial statute should be liberally construed in order to effectuate the remedial purpose for which it was enacted is firmly established.”) (citations omitted).

¹⁰⁷ *In re Estate of Coborn*, 2015 WY 89, ¶ 9, 352 P.3d 271, 273–74 (2015).

¹⁰⁸ *See e.g., Edgcomb v. Lower Valley Power & Light, Inc.*, 922 P.2d 850, 859 (Wyo. 1996); *Wyoming Refining Co. v. Bottjen*, 695 P.2d 647, 650 (Wyo. 1985); *Johnson v. Safeway Stores, Inc.*, 568 P.2d 908, 914–15 (Wyo. 1977).

¹⁰⁹ *In re Pohl*, 980 P.2d 816, 820 n.2 (Wyo. 1999) (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)), overruled on other grounds by *Torres v. State ex rel. Wyoming Workers' Safety & Comp. Div.*, 2004 WY 92, ¶ 7, 95 P.3d 794, 796 (Wyo. 2004).

¹¹⁰ *In re Estate of Coborn*, ¶ 9, 352 P.3d at 273–74.

¹¹¹ *Krenning v. Heart Mountain Irrigation Dist.*, 2009 WY 11, ¶ 9, 200 P.3d 274, 778 (2009).

¹¹² *In re Estate of Coborn*, ¶ 4, 352 P.3d at 272.

2015 amendment, the statute stated an application for a “summary decree of distribution may be filed in the district court of ‘the’ county where ‘the’ property is situated.”¹¹³ The district court interpreted the use of “the county” to mean that other Wyoming counties were excluded from the district court’s authority.¹¹⁴ The amended statute did not include the “exclusionary” phrase “the county.” Instead, the amendment replaced this phrase with “a decree of summary distribution of property.”¹¹⁵ This new phrase eliminated the phrase that the district court relied on to reach its conclusion.¹¹⁶ The final sentence of the amended statute did not include any mention of which court had the authority to decree the summary distribution.¹¹⁷

Moreover, the amended statute used the phrase “an application.”¹¹⁸ This phrase is in the singular tense. The plain and ordinary meaning of “an application” thus entails only one application. If the phrase read “application(s),” then the plain and ordinary meaning would require an interpretation that multiple applications may be necessary. However, the use of the singular “application” results in the plain and ordinary meaning that distributees need to only file one and only one application, even if the estate’s property is located in multiple Wyoming counties.

Additionally, the added phrase “a decree of summary distribution of property” is also in the singular form.¹¹⁹ Similarly, the plain and ordinary meaning of the singular “decree,” rather than “decree(s),” results in the interpretation that one district court can order summary distribution regardless of whether the estate property is located in multiple Wyoming counties. Thus, the Wyoming Supreme Court was correct in concluding that the amended statute allowed a district court to order summary distribution of property in other counties.

There are also strong public policy reasons to allow district courts to grant summary distribution of small estates without requiring appellants to file a petition for summary distribution in every county in which the estate’s property is located. As discussed below, these policy reasons include: time and expense proportionality, ability for a personal representative to find counsel, and lightening the burden on the courts. When an estate is small and relatively simple, typical formal probate proceedings can cause delays and costs that are disproportional to

¹¹³ Brief of Appellants at 8, *In re Estate of Coborn*, 2015 WY 89, 352 P.3d 271 (Wyo. 2015) (No. S-14-0315).

¹¹⁴ *Id.* at 9.

¹¹⁵ *In re Estate of Coborn*, ¶ 8, 352 P.3d at 273.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Brief of Appellants at 8–9, *In re Estate of Coborn*, 2015 WY 89, 352 P.3d 271 (Wyo. 2015) (No. S-14-0315).

¹¹⁹ *In re Estate of Coborn*, ¶ 8, 352 P.3d at 273.

the size and complexity of the estate.¹²⁰ In order to address such disproportional circumstances some states have enacted summary distribution statutes, which can greatly abbreviate the property distribution process.¹²¹ State statutes govern the cost and process of formal probate proceedings in Wyoming.¹²² These Wyoming statutes set the following attorney fees required for formal probate proceedings, which are based on the value of the estate:

- (i) For the first one thousand dollars (\$1,000.00) of the basis, ten percent (10%);
- (ii) For the amount over one thousand dollars (\$1,000.00) and not exceeding five thousand dollars (\$5,000.00) of the basis, five percent (5%);
- (iii) For the amount over five thousand dollars (\$5,000.00) and not exceeding twenty thousand dollars (\$20,000.00) of the basis, three percent (3%);
- (iv) For all sums over twenty thousand dollars (\$20,000.00) of the basis, two percent (2%).¹²³

Given that the fees are based on the percentage of the estate, it may be difficult to obtain an attorney to take on a small estate probate matter.¹²⁴ For example, based on the statutory attorney fees, for an estate that is worth \$180,000, absent any waiver or unusual circumstances, an attorney may charge approximately \$3,950.¹²⁵ On the other hand, an estate that is worth \$800,000 will require \$16,350 in legal fees as required by the statute.¹²⁶ Given the necessary document production, hearing preparation and attendance, client communication and counseling, and other required tasks, small estates reimburse at a much lower rate than large estates.¹²⁷ Additionally, courts recognize that basing attorney fees on time spent would result in disproportionately high fees for small estates.¹²⁸ Judges and attorneys also recognize that fees awarded in small estates might not

¹²⁰ POWELL ON REAL PROPERTY, *supra* note 7, at § 85.18.

¹²¹ *Id.*

¹²² WYO. STAT. ANN. § 2-7-804 (2016).

¹²³ *Id.*

¹²⁴ Brief of Appellants at 15, *In re Estate of Coborn*, 2015 WY 89, 352 P.3d 271 (Wyo. 2015) (No. S-14-0315) (citations omitted).

¹²⁵ *See* WYO. STAT. ANN. § 2-7-804.

¹²⁶ *Id.*

¹²⁷ *See id.*

¹²⁸ *See* Allan E. Korpela, *Amount of Attorneys' Compensation in Proceedings Involving Wills and Administration of Decedents' Estates*, 58 A.L.R.3d 317, 325–26.

adequately compensate attorneys for the services they have rendered.¹²⁹ Given that the \$160,000 and \$800,000 estates require the same baseline minimum steps if both undergo formal probate proceedings, it is apparent why it may be difficult to obtain an attorney for the small estate.¹³⁰

Formal probate proceedings also entail significant delays.¹³¹ For example, the Wyoming statutes require various notices and publication requirements, including a three-month period allowing notice to creditors.¹³² The estate must also publish a notice of admission of the will or estate to probate and notice of the appointment of the personal representative once a week for three consecutive weeks in a daily or weekly newspaper of general circulation in the county in which the probate is pending.¹³³ If small estates had to adhere to these statutory requirements in each county in which the estate held property, the costs of the requirements would be disproportionate to the size of the estate. Additionally, formal estate proceedings have a set minimum burden on the court system with a baseline number of hearings and steps required for each estate.¹³⁴

Allowing small estates to follow an abbreviated summary distribution process alleviates the disproportionate costs for small estates. However, if personal representatives of small estates were required to file applications for summary distribution in each county where the estate holds property, then the requirements would remain disproportional relative to the estate size. The appellant's brief filed for the principle case offers a poignant example:

This process would be particularly cumbersome in the context of cases requiring mandatory notification of the State Department of Health under W.S. § 2-7-205(a)(iii). Bifurcating the process in which the Department of Health receives notice and files a subsequent creditor claim into a proceeding involving only a single item of an estate's property would be unusual, particularly if the estate has multiple distributees receiving property in multiple counties. It would be extremely inefficient to require

¹²⁹ *In re Estate of Draganoff*, 46 Misc. 2d 855, 858, 260 N.Y.S.2d 996, 999 (Sur. 1965).

¹³⁰ *See In re Augar*, 39 Misc. 2d 936, 940, 242 N.Y.S.2d 84 (Sup. Ct.), *aff'd sub nom. Matter of Augar*, 19 A.D.2d 861, 245 N.Y.S.2d 358 (1963), and *aff'd sub nom. Matter of Frank*, 19 A.D.2d 862, 245 N.Y.S.2d 361 (1963), and *aff'd sub nom. Matter of Bernard*, 19 A.D.2d 861, 245 N.Y.S.2d 362 (1963) (discussing the social duty of legal counsel to take on small estates despite a lack of lucrative compensation, particularly with respect to estates of the incompetent).

¹³¹ THOMPSON ON REAL PROPERTY, *supra* note 1, at § 88.13(d)(3)(i).

¹³² WYO. STAT. ANN. § 2-7-201 (2016).

¹³³ *Id.*

¹³⁴ *See id.*

the Department of Health to use creditor claims before multiple courts in multiple counties to satisfy debts owed by a single decedent's estate.¹³⁵

Allowing small estates to decrease the steps necessary to distribute the estate by filing one application for summary distribution, regardless of the number of Wyoming counties in which the estate holds property, ensures that the time and cost spent on small estate distribution is proportionate to the size and complexity of the estate.

Moreover, requiring only one summary distribution process eases the burden on courts. States have an interest in protecting against improper estate administration.¹³⁶ Formal probate proceedings help guard against improper administration.¹³⁷ However, states also have an interest in reducing the burden on courts.¹³⁸ These two interests conflict in estate administration.¹³⁹ Summary administration reduces the court docket, but also inherently includes some risk of improper administration.¹⁴⁰ Each state caps its risk by setting a dollar amount to define a small estate.¹⁴¹ A low dollar cap for summary administration involves risk of fraud, but will ensure the incidents of fraud are linked to low dollar amounts.¹⁴² Wyoming offers a balance between fraud risk and burden on the courts by capping estates eligible for summary distribution at \$200,000.

The court's decision ensures the time and expense related to succession is proportionate to the size and complexity of estates. Allowing for only one summary distribution process also helps ensure that the personal representative will be able to find an attorney willing to take on the small estate matter. Finally, the court's decision also eases the burden on district courts. Given these policy reasons, the court was correct in its conclusion.

B. Likely Effect on Estate Distribution in Practice

The combination of the amended statute and the Wyoming Supreme Court's decision provide certainty to estate administration attorneys regarding how to interpret the statute. As discussed earlier, this decision decreases the cost and time

¹³⁵ Brief of Appellants at 16, *In re Estate of Coborn*, 2015 WY 89, 352 P.3d 271 (Wyo. 2015) (No. S-14-0315), 2015 WL 4644925, at 16.

¹³⁶ Blumberg, *supra* note 43, at 33.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

required to distribute a small estate.¹⁴³ This assists the beneficiaries of the estate by making the distribution process quicker and less costly.¹⁴⁴ The abbreviated process also aids the beneficiaries, as it will likely be easier to find an attorney who will take on the matter, since the tasks required to achieve the distribution are more proportional to the legal fees that the attorney is entitled to by statute.¹⁴⁵

While the abbreviated process benefits the beneficiaries and the courts, there are negative consequences to the court's decision for creditors. Formal probate proceedings require a three-month notice to creditors.¹⁴⁶ The summary distribution process requires only a thirty-day notice period before the court enters a decree of summary distribution.¹⁴⁷ Summary distribution proceedings require publication once a week for two consecutive weeks in a newspaper of general circulation in the county in which the application was filed.¹⁴⁸ Thus, the statute only requires published notice in the county in which the estate representative files the application, which is not necessarily the county where the property is located. Accordingly, creditors have an increased burden to check counties throughout Wyoming to determine if they need to act to collect from the estate. Creditors will also have to check newspapers more frequently due to the lessened publication duration requirement. However, unlike Wyoming, the majority of states do not require notice for summary administration.¹⁴⁹ Wyoming's notice requirement strikes a reasonable balance between notice to creditors and efficiency for the beneficiaries and the court. Any uncollected debts are capped at \$200,000, due to the statutory small estate definition, and creditors retain more protection for larger estates. Moreover, a small estate may have few to no assets available to creditors once homestead, family allowances, or exemptions are applied.¹⁵⁰

Possible drawbacks for potential distributees also exist, particularly if the decedent dies intestate or with a will that contains controversial distributions. These drawbacks include the abbreviated time in which potential distributees must object and the abbreviated publication duration and location requirements. Fortunately, subsection (d) of the statute requires:

The notice of application shall be served by first class mail to the last known address, with copy of application attached, to the surviving spouse of the decedent, if any, and to all other distributees, so far as known, or to their guardians if any of them

¹⁴³ See *supra* notes 102–142 and accompanying text.

¹⁴⁴ See *supra* notes 102–142 and accompanying text.

¹⁴⁵ See *supra* notes 102–142 and accompanying text.

¹⁴⁶ WYO. STAT. ANN. § 2-7-201 (2016).

¹⁴⁷ WYO. STAT. ANN. § 2-1-205(f) (2016).

¹⁴⁸ *Id.*

¹⁴⁹ Blumberg, *supra* note 43, at 33.

¹⁵⁰ THOMPSON ON REAL PROPERTY, *supra* note 1, at § 88.13(d)(3)(i).

are minors, or to their personal representatives if any of them are deceased and to any reasonably ascertainable creditors not later than ten (10) days after the date of first publication.¹⁵¹

This requirement helps increase the chance that potential distributees and creditors will receive notice of the proceeding and act according to their potential interests. While there are drawbacks, particularly related to creditors, the benefits to the distributees and the court system outweigh these negatives, especially with the inclusion subsection (d) in the summary distribution statute.

As discussed above, the amendment to the Wyoming summary distribution statute and the court's holding in *In re Estate of Coborn* results in drawbacks for potential distributees and creditors. However, formal probate proceedings still give potential distributees and creditors protections if the estate is valued at more than \$200,000. Other benefits of formal probate proceedings include a formalized process to resolve disputes and clear title to property.¹⁵² Despite the advantages of summary administration, formal probate proceedings remain necessary to properly administer large and complex estates.¹⁵³

V. CONCLUSION

The holding in *In re Estate of Coborn*, was correct for two reasons; the amendment was expository legislation, and the holding promoted public policy.¹⁵⁴ This case offered the first opportunity for the court to interpret the newly amended statute.¹⁵⁵ The court concluded that the summary distribution statute, Wyoming Statute § 2-1-205, authorizes district courts to order summary distribution of real property located in other Wyoming counties.¹⁵⁶ Allowing one application for summary distribution for small estates, regardless of the number of Wyoming counties in which the estate holds property, will ensure that the time and money spent on small estate distribution is proportionate to the size and complexity of the estate.¹⁵⁷ Additionally, requiring only one summary distribution process lessens the burden on courts and helps ensure that the personal representative will be able to find an attorney willing to take on the small estate matter.¹⁵⁸ Finally, the benefits to distributees and the district courts outweigh the potential drawbacks to creditors from this decision.¹⁵⁹

¹⁵¹ WYO. STAT. ANN. § 2-1-205(d).

¹⁵² THOMPSON ON REAL PROPERTY, *supra* note 1, at § 88.13(d)(3)(i).

¹⁵³ Morton, *supra* note 42, at 175.

¹⁵⁴ See *supra* notes 102–142 and accompanying text.

¹⁵⁵ *In re Estate of Coborn*, 2015 WY 89, ¶ 8, 352 P.3d 271, 273 (2015).

¹⁵⁶ *Id.* at ¶ 10, 352 P.3d at 274.

¹⁵⁷ See *supra* notes 102–153 and accompanying text.

¹⁵⁸ See *supra* notes 102–153 and accompanying text.

¹⁵⁹ See *supra* notes 102–153 and accompanying text.