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'Til Death Do Us Part? Louisiana's Inconsistent Approach to Divorce Litigation After a Decedent-Spouse's Death

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‘Til Death Do Us Part? Louisiana’s Inconsistent Approach to Divorce Litigation After a Decedent-Spouse’s Death

*Elise I. Diebold**

TABLE OF CONTENTS

Introduction	352
I. The End of Marriage	355
A. Termination of the Marital Relationship by Death	358
B. Termination of the Marital Relationship by Divorce.....	361
1. Termination of a Traditional Marriage by Divorce.....	361
2. Termination of a Covenant Marriage by Divorce	363
3. Defending Against the Divorce Petition	364
4. Effects of Termination by Divorce.....	365
C. Termination of the Marital Relationship by Nullity	366
II. Litigating a Decedent’s Divorce After Their Death	367
A. The Historical Approach: <i>Arceneaux v. Arceneaux</i>	368
B. <i>LaRocca v. LaRocca</i>	370
C. The Application of <i>LaRocca</i> by Louisiana Courts	374
1. <i>Cannatella v. Cannatella</i>	374
2. <i>McCann v. McCann</i>	376
3. <i>In Re Succession of Buhler</i>	378
D. Expansion of Successors’ Rights in <i>Succession of Ricks and Wederstrandt v. Kol</i>	380
1. <i>Succession of Ricks</i>	381
2. <i>Wederstrandt v. Kol</i>	384

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III. Comparative Analysis—Divorce After Death Across the United States.....	386
IV. Louisiana’s Inconsistent Approach to Divorce After Death.....	389
A. Jurisprudential Requirements to Continue Litigation of a Decedent-Spouse’s Divorce.....	390
B. Issues Arising from Unclear Judicial Guidelines	393
1. Inconsistencies in the Presumed Intent of the Parties	394
2. Potential for Litigation Delays to Determine the Property Rights of the Parties.....	395
3. Louisiana Jurisprudence Allows Successors to Continue Litigating Similar Issues for a Decedent	396
V. Clarifying Successors’ Rights to Continue a Decedent-Spouse’s Divorce Litigation	397
A. Legislative Solution.....	397
1. Proposed Prerequisites Successors Must Meet to Continue the Decedent-Spouse’s Divorce Litigation.....	397
a. The Divorce Petition was Filed Prior to the Decedent-Spouse’s Death	398
b. Intertwined Property Interests are at Stake in and Depend on the Outcome of the Divorce	399
c. Proposed Legislation	399
2. Proposed Procedural Framework	400
a. Requirements and Burdens of Proof.....	400
b. Abandonment.....	401
c. Dismissal	402
d. Appeal.....	403
B. Interim Judicial Solution.....	403
Conclusion.....	404
Appendix of Proposed Amendments.....	406

INTRODUCTION

Imagine a couple, Alice and Billy, who just celebrated their third wedding anniversary. Alice is a loving mother with two adult children from her first marriage. During their marriage, Alice and Billy, feeling so in love, both executed wills in which they decided to leave their entire

estates to one another upon their deaths. Unfortunately, Billy cheated on Alice during their marriage. Under Louisiana law, Billy's affair entitled Alice to an immediate divorce on the ground of adultery.¹ Thus, Alice promptly filed for divorce. However, that "immediate" divorce, while not subject to a statutory waiting period, was still subject to the general delays of litigation.²

Unfortunately, Alice died before the divorce action could be heard before a court. Since Alice died while awaiting action by the court, Alice was never granted the "immediate" divorce she was entitled to. Ultimately, Alice and Billy were still considered married at the time of Alice's death. With no judgment of divorce, Alice's entire estate went to Billy. However, due to Billy's affair, Alice no longer intended to leave her entire estate to Billy as she had provided for in her will. Instead, she wished to leave her estate to her two children.

Due to the unfortunate timing of Alice's death before the divorce judgment, Alice's estate was disposed of in a manner contrary to her intent. Since Alice was focused on finalizing her divorce from Billy, she never updated her will. If the court issued a divorce judgment before Alice's death, the provisions in her will leaving property to Billy would be revoked.³ Instead, intestacy law would apply, and Alice's estate would go to her two children.⁴

Now imagine that, under the same circumstances, Alice died, but without a valid will. Without a valid will, a surviving spouse is generally provided for from the decedent's estate while a former spouse is not.⁵ Thus, whether Billy is entitled to property from Alice's estate depends on whether Alice and Billy's divorce was final before she died.⁶ If the divorce was not finalized, Alice and Billy would still be considered married, and Billy would benefit from Alice's estate, an outcome contrary to Alice's intentions. However, in the case of a finalized divorce, Alice's estate would go to her two children.⁷

1. LA. CIV. CODE arts. 103(2), 103.1 (2023).

2. Monica Hof Wallace, *A Primer on Divorce in Louisiana*, 64 LOY. L. REV. 617, 639 (2018).

3. LA. CIV. CODE art. 1608(5).

4. *Id.* arts. 880, 888–90.

5. *See id.* arts. 880, 888–90, 1608(5).

6. *See id.* arts. 880, 888–90, 1608(5).

7. If spouses are married with children at the time of one of their deaths, the surviving spouse will get a usufruct over the community property, but the children will have naked ownership. If the spouses had children and are divorced at the time of one of their deaths, the children will inherit the community property in full ownership. *Id.* arts. 888–89.

As these two hypotheticals illustrate, whether an individual is married or divorced at the time of their death significantly affects the transmission of their estate to their successors, regardless of whether they had a valid will.⁸ If a decedent dies testate and names his or her spouse as a legatee, then the legatee spouse is entitled to inherit if the spouses remain married at the time of death.⁹ However, this is not the case if the spouses were divorced.¹⁰ If the decedent dies intestate, a surviving spouse is entitled to inherit community property and potentially inherit separate property, whereas a former spouse is not.¹¹

Under the current state of Louisiana law, courts are unclear about how they should apply provisions of law when the spouses are in the middle of a divorce proceeding at the time of one of their deaths.¹² The traditional view is that the action for divorce abates at the death of one of the spouses, meaning that the spouses remain married for purposes of inheritance if one dies before the judgment of divorce becomes final.¹³ Under the traditional view, the marriage is deemed terminated by death, not divorce.¹⁴ However, Louisiana courts have slowly eroded the traditional view in a series of judicial opinions that allow successors to continue the litigation of a decedent's divorce after death.¹⁵ These decisions produce a number of open questions, leaving behind uncertainty about how Louisiana law applies when a spouse dies while a couple's divorce is pending.¹⁶

Whether the courts allow successors to continue litigating a decedent's divorce hinges on both the procedural stage of the litigation at the time of the decedent's death and the type of property rights at stake in the continued litigation.¹⁷ However, these cases do not clearly define the procedural stage in a divorce proceeding that a successor may continue the

8. *See id.* arts. 880, 888–90, 1608(5).

9. *See id.* arts. 880, 888–90, 1608(5).

10. *Id.* art. 1608(5).

11. *See id.* arts. 880, 888–90, 1608(5).

12. *See LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

13. *Arceneaux v. Arceneaux*, 94 So. 2d 449, 450 (La. 1957).

14. *Id.*

15. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

16. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

17. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

decedent's litigation and what types of property rights are required.¹⁸ Since Louisiana courts have failed to answer these questions, there is little clarity on the important issue of whether a decedent's successors can continue litigating the decedent's pending divorce upon their death.¹⁹ This lack of clarity ultimately extends to whether a spouse or his or her successors are entitled to the decedent's estate.²⁰

This Comment seeks to provide a legislative solution to clarify the right of a decedent-spouse's successors to continue divorce litigation after the decedent-spouse's death. This approach will consider the presumed intent of the spouses and the distribution of property between the spouses accordingly. Further, this approach will distribute the property in a manner consistent with the termination of the community property regime by divorce, rather than death. Recognizing that a legislative solution may take time to implement, this Comment also suggests a jurisprudential expansion of existing doctrine to allow courts to reach sensible results while awaiting a legislative fix.

Part I of this Comment will outline Louisiana law regarding the consequences of the termination of the marital relationship by death, by divorce, or as a result of nullity. Part II will explore both the historical approach and the current state of Louisiana jurisprudence with respect to when a successor can continue litigating a decedent's divorce. Part III will compare the current state of Louisiana law with other jurisdictions across the United States. Part IV will demonstrate the issues that have arisen from inconsistent jurisprudence. Lastly, Part V will propose the enactment of legislation to allow successors to continue litigating a decedent's pending divorce action. In the interim, Louisiana courts should more broadly extend the holdings in prior cases to address similar future cases.

I. THE END OF MARRIAGE

Marriage is a legal relationship formed between two individuals by a civil contract.²¹ In Louisiana, there are two types of marriages, traditional and covenant, each subject to different formation requirements.²² A valid traditional marriage requires: (1) the absence of legal impediment; (2) a

18. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

19. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

20. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

21. LA. CIV. CODE art. 86 (2023).

22. *Id.* art. 87; LA. REV. STAT. § 9:2801 (2023).

marriage ceremony; and (3) the free consent of the parties to become spouses, expressed at the ceremony.²³ Alternatively, Louisiana Revised Statutes § 9:273 provides the requirements for covenant marriages.²⁴ To enter into a covenant marriage, spouses must meet requirements unique to a covenant marriage in addition to the traditional marriage requirements.²⁵ One unique requirement of a covenant marriage includes the spouses signing a declaration of intent to enter into a covenant marriage.²⁶

Provided that a couple has perfected a marriage that produces civil effects,²⁷ the legal regime of community property will govern the spouses' property between themselves and third parties.²⁸ Particularly, the community property regime governs the ownership and management of a married couple's property.²⁹ Unless the spouses contract out of the legal regime of community property through a matrimonial agreement,³⁰ the community property regime applies.³¹ Under the community property regime, property of married persons will be classified as separate or community.³² Separate property belongs to one spouse exclusively, and typically includes property acquired before the establishment of the

23. LA. CIV. CODE art. 87. Legal impediments include: (1) prior undissolved marriages; (2) marriages between ascendants and descendants; (3) marriages between collaterals within the fourth degree; (4) marriages where one spouse is under the age of 16; and (5) marriages when one spouse is between the ages of 16 and 17 and the other spouse is three or more years older. *Id.* arts. 88–90.1.

24. LA. REV. STAT. § 9:273.

25. *Id.*

26. *Id.* This declaration requires a “recitation signed by both parties,” an affidavit attesting that they received adequate premarital counseling related to the “seriousness” of covenant marriage, and an attestation by the counselor that the couple received counseling. *Id.*

27. A valid marriage will produce civil effects through the community property regime, provided that the couple has not contracted out of it. LA. CIV. CODE arts. 2325, 2327. A null marriage may produce civil effects, in certain circumstances. *See* discussion *infra* Part I.D.

28. LA. CIV. CODE arts. 2325, 2327.

29. *Id.* arts. 2325, 2327.

30. Parties are free to contract out of the legal regime of community property by a contract called a matrimonial agreement but commonly known as a “pre-nuptial agreement,” in any manner not in violation of public policy. *Id.* arts. 2328–29.

31. *Id.* art. 2334; ANDREA B. CARROLL, FAMILY LAW IN LOUISIANA 250 (2d ed. 2020). The Louisiana legislature formulated the community property regime to deal with the property of married persons in a manner generally suitable to most couples. *Id.*

32. LA. CIV. CODE arts. 2335, 2341.1.

community property regime.³³ In contrast, each spouse owns an “undivided one-half interest” of community property, which includes property acquired by the “effort, skill, or industry of either spouse” during the existence of the community property regime.³⁴

Once a marriage has begun, there are multiple ways for it to end, including death, divorce, or a nullity.³⁵ When a marriage is terminated, the community property regime will be terminated therewith.³⁶ The manner in which the marital relationship is terminated affects the property and inheritance rights of the couple once united in marriage.³⁷ Depending on the reason for the marriage’s termination, different rules apply to the partition and classification of property.³⁸

When the community property regime terminates due to the death or a judgment of declaration of death of one of the spouses, the general provisions of co-ownership apply to the disbursement of the property.³⁹ However, when the community property regime terminates for a cause other than death—like divorce—Louisiana Civil Code articles 2369.1 through 2369.8 and Louisiana Revised Statutes § 9:2801 apply to the partition of the community property.⁴⁰ As noted above, when the marriage is a nullity, the community property regime between the spouses is deemed never to have existed.⁴¹

Further, any property acquired following the termination of the community property regime is considered separate property.⁴² Once a divorce judgment is rendered, the regime terminates retroactively to the date of the filing of the divorce petition.⁴³ Thus, the date of filing affects the property rights of the parties because spouses will continue amassing

33. *Id.* art. 2341.

34. *Id.* arts. 2341.1, 2338.

35. *Id.* arts. 87, 101; LA. REV. STAT. § 9:2801 (2023).

36. LA. CIV. CODE art. 2356. Specifically, termination of the community property regime may occur by: (1) the death of one of the spouses; (2) a judgment of divorce or separation of property; (3) a matrimonial agreement; or (4) a declaration of the marriage’s nullity. *Id.*

37. *See id.* arts. 880, 888–90, 1608(5), 2369.1–2369.8.

38. *See id.* arts. 880, 888–90, 1608(5), 2369.1–2369.8.

39. *Id.* art. 2369.1; ANDREA CARROLL ET AL., MATRIMONIAL REGIMES § 7:20, in 16 LOUISIANA CIVIL LAW TREATISE (5th ed. 2021).

40. LA. CIV. CODE arts. 2369.1–2369.8.

41. *See id.* arts. 96–97. However, a marriage that is a nullity may produce civil effects in certain circumstances. *See* discussion *infra* Part I.D.

42. LA. CIV. CODE art 2341.

43. *Id.* art. 159.

community property until the filing of the petition for divorce.⁴⁴ Should a spouse purchase property after a petition for divorce has been filed and a divorce judgment is later rendered, the purchased property is the purchasing spouse's separate property.⁴⁵ If for some reason no judgment of divorce is later rendered, perhaps due to the death of one of the spouses, the purchased property would be the spouses' community property.⁴⁶ Thus, whether the marriage is deemed terminated by death, terminated by divorce, or deemed never to have existed by virtue of a nullity, the classification of property as community or separate will be affected.⁴⁷

A. Termination of the Marital Relationship by Death

One way the marital relationship may be terminated is by the death of one of the spouses.⁴⁸ Termination of the marriage by death entitles the surviving spouse⁴⁹ to a variety of rights, particularly property rights.⁵⁰ Through a succession, the decedent's estate is transferred to his or her successors, and the successors possess the estate.⁵¹ The transmission of property and the specific property rights entitled to the surviving spouse differ depending on whether the decedent died testate or intestate.⁵²

A decedent dies testate when the decedent dies with a valid will.⁵³ A will, or a *donation mortis causa*, provides for a donation that becomes effective upon the death of the donor where the donor disposes of all or part of his or her property.⁵⁴ These donations may be revoked during the donor's lifetime.⁵⁵ In particular, many people donate property to their spouse or leave other provisions in favor of their spouse through a will.⁵⁶ For whatever property the will disposes of, the provisions of the will apply

44. *See id.*

45. *See id.* arts. 159, 2338, 2341.

46. *See id.* arts. 159, 2338, 2341.

47. *See id.* arts. 159, 2338, 2341.

48. *Id.* art. 101.

49. A surviving spouse is "[a] spouse who outlives the other spouse." *Spouse*, BLACK'S LAW DICTIONARY (11th ed. 2019).

50. *See* LA. CIV. CODE arts. 880, 888–90, 1608(5).

51. *Id.* art. 871.

52. *See id.* arts. 880, 888–90, 1608(5).

53. *See id.* art. 874.

54. *Id.* art. 1469.

55. *Id.*

56. Katherine H. Dampf, *Happily Ever After: Eliminating the 890 Usufruct to Protect the Blended Family*, 74 LA. L. REV. 899, 906 (2014).

rather than the provisions of intestate succession law.⁵⁷ If the will did not provide for the disposal of all of a decedent's property, the law of intestacy applies to the remaining property.⁵⁸ Should an individual die without a will or with an invalid will, intestate succession law controls.⁵⁹

By contrast, a person who dies intestate dies without a valid will.⁶⁰ Intestate succession law provides a method to facilitate the distribution of a decedent's property when the decedent did not have a valid will that demonstrated intent contrary to the provisions of intestate succession law.⁶¹ The Natural Duty Theory and the Presumed Will Theory attempt to explain the rationale behind intestacy law and the manner in which it distributes a decedent's property.⁶²

The Natural Duty Theory approaches intestacy law with the goal of distributing property upon the decedent's death in a manner most likely to "further the goals of society."⁶³ Under the Natural Duty Theory, decedents continue to have a "natural duty" to their dependent successors, even after their death.⁶⁴ Applying the Natural Duty Theory, a decedent should continue to financially support those family members that he or she financially supported during his or her lifetime, including children or a spouse.⁶⁵

In contrast, the Presumed Will Theory considers what a decedent likely would have intended to do with his or her property upon death, rather than what society would intend to do after his or her death.⁶⁶ By applying this theory, state legislatures consider how the average person would intend to distribute their property upon their death.⁶⁷ Because it is difficult to determine how a decedent would want his or her property to be distributed upon death, policymakers consider the patterns found in wills in general, including patterns of spouses leaving their entire estates to the other spouse.⁶⁸

57. LA. CIV. CODE art. 880.

58. *Id.*

59. *Intestate*, BLACK'S LAW DICTIONARY (11th ed. 2019).

60. *Id.*

61. *Succession*, BLACK'S LAW DICTIONARY (11th ed. 2019).

62. Dampf, *supra* note 56, at 904–06.

63. *Id.* at 904.

64. *Id.* at 905.

65. *Id.*

66. *Id.* at 906.

67. *Id.*

68. *Id.*

Intestacy law in Louisiana provides that a decedent-spouse's separate property may be distributed to the decedent-spouse's descendants,⁶⁹ ascendants,⁷⁰ collaterals,⁷¹ or a spouse not judicially separated⁷² from him or her.⁷³ The distribution of the decedent-spouse's share of community property depends on whether he or she has descendants.⁷⁴ If the decedent-spouse has descendants, the descendants will take possession of the decedent-spouse's community and separate property.⁷⁵ When a decedent-spouse has both a surviving spouse and descendants, the law provides the surviving spouse with a usufruct over the decedent-spouse's share of the community property.⁷⁶ The usufruct provides the surviving spouse with the right to use and enjoy the fruits of the decedent-spouse's community property for a limited period of time, lasting until the surviving spouse's death or remarriage, whichever occurs first.⁷⁷ The descendants are considered naked owners⁷⁸ of the community property and are not allowed to use or enjoy the fruits of the property until the termination of the usufruct.⁷⁹ If a decedent-spouse has no descendants, the decedent-spouse's surviving spouse will take possession of the decedent-spouse's share of community property.⁸⁰

69. A descendant is “[s]omeone who follows in the bloodline of an ancestor.” *Descendant*, BLACK’S LAW DICTIONARY (11th ed. 2019).

70. An ascendant is “[s]omeone who precedes in lineage, such as a parent or grandparent.” *Ascendant*, BLACK’S LAW DICTIONARY (11th ed. 2019).

71. A collateral is “not direct in line, but on a parallel or diverging line of descent; of, or relating to, or involving a person who is related by blood but is neither an ancestor nor a descendant.” *Collateral*, BLACK’S LAW DICTIONARY (11th ed. 2019). An uncle is an example of a collateral.

72. A judicial separation is “[a] partial or qualified divorce by which the parties were separated and allowed . . . to live apart, but remain technically married; legal separation.” *Divorce*, BLACK’S LAW DICTIONARY (11th ed. 2019). In Louisiana today, judicial separation is only allowed for couples in a covenant marriage. LA. REV. STAT. § 9:307 (2023).

73. LA. CIV. CODE art. 880 (2023).

74. *Id.* arts. 889–90.

75. *Id.* art. 888.

76. *Id.* art. 890.

77. *Id.*

78. A naked owner is “[a] person whose property is burdened by a usufruct. The naked owner has the right to dispose of the property subject to the usufruct, but not to derive its fruits.” *Owner*, BLACK’S LAW DICTIONARY (11th ed. 2019).

79. LA. CIV. CODE art. 890; *Usufruct*, BLACK’S LAW DICTIONARY (11th ed. 2019).

80. LA. CIV. CODE art. 889.

Further, the surviving spouse is entitled to the marital portion, equivalent to one-fourth of the estate, when the decedent-spouse dies “rich in comparison” to the surviving spouse.⁸¹ Even in the case of separation, the surviving spouse is not precluded from the marital portion, unless the separation occurred due to the fault of the surviving spouse.⁸² Thus, when the marital relationship terminates by death, the classification of whether the decedent died testate or intestate will affect the transmission of the decedent’s property to the decedent’s successors.⁸³

B. Termination of the Marital Relationship by Divorce

Death is not the only mechanism that terminates a marriage.⁸⁴ Marriage may also terminate by divorce.⁸⁵ When the decedent’s marriage is dissolved by divorce at the time of death, the decedent-spouse’s successors possess different property rights than if the decedent-spouse was married at the time of his or her death.⁸⁶ Divorce proceedings in Louisiana differ depending on whether the spouses entered into a traditional or covenant marriage.⁸⁷

The date of the divorce petition’s filing retroactively terminates the community property regime once the divorce is granted.⁸⁸ However, not all divorces in Louisiana are the same procedurally, which influences the timing of the termination of the community property regime.⁸⁹ The Louisiana Civil Code and the Revised Statutes provide for both fault-based and no-fault divorces, under both traditional and covenant marriage.⁹⁰

1. Termination of a Traditional Marriage by Divorce

For couples contracted in traditional marriage, options are available for both fault-based and no-fault divorce.⁹¹ Louisiana Civil Code article 103 enumerates different grounds for a fault-based divorce in traditional marriages, including circumstances of adultery, felony convictions, and

81. *Id.* arts. 2432, 2434.

82. *Id.* art. 2433.

83. *See id.* arts. 880, 888–90, 1608(5).

84. *See id.* art. 101.

85. *Id.*

86. *Id.* arts. 880, 888–90, 1608(5).

87. *See id.* arts. 102–03; LA. REV. STAT. § 9:307 (2023).

88. LA. CIV. CODE art. 159.

89. *Id.* arts. 102–03, 159.

90. *Id.* arts. 102–03; LA. REV. STAT. § 9:307.

91. LA. CIV. CODE arts. 102–03.

abuse.⁹² Filing for a fault-based divorce entitles the petitioning spouse to an immediate divorce.⁹³ However, parties are still constrained by the time delays involved in litigation.⁹⁴

Louisiana law also provides two different methods, enumerated in Louisiana Civil Code articles 102 and 103(1), to obtain a no-fault divorce in traditional marriages.⁹⁵ Under both articles, the spouses must live separate and apart for the requisite time period before a no-fault judgment of divorce will be granted.⁹⁶ When the couple has no minor children, the requisite time period is 180 days, however the time period is extended to 365 days if the couple has minor children.⁹⁷

Under Louisiana Civil Code article 102, either spouse must first file a petition for divorce.⁹⁸ The date the petition is filed starts the countdown for the required period of living separate and apart.⁹⁹ Once the time period for living separate and apart has passed, either spouse can file a rule to show cause to set the matter for hearing.¹⁰⁰ While article 102 divorces require a couple to file a petition for divorce prior to living separate and apart, an article 103(1) divorce requires the couple to live separate and apart before filing for divorce.¹⁰¹ Provided that the couple has lived separate and apart for the requisite time period prior to the petition's filing, the couple is entitled to an immediate divorce.¹⁰²

Generally, a three-year abandonment provision applies to divorce actions.¹⁰³ However, a petition for an article 102 divorce is deemed abandoned if a rule to show cause has not been filed within two years of the service of the petition or a written waiver of service.¹⁰⁴ Thus, the community property regime may terminate up to two years before the court grants a divorce because the community property regime terminates

92. *Id.* art. 103.

93. Wallace, *supra* note 2, at 633.

94. *Id.* at 639.

95. LA. CIV. CODE arts. 102, 103(1). To meet the requirement of living separate and apart, the parties must “live apart in such a manner that [members of] the community are aware of the separation.” *Lemoine v. Lemoine*, 715 So. 2d 1244, 1248 (La. Ct. App. 3d Cir. 1998).

96. LA. CIV. CODE arts. 102, 103, 103.1.

97. *Id.* art. 103.1.

98. *Id.* art. 102.

99. *Id.* arts. 102, 103.1.

100. *Id.* arts. 102, 103.1.

101. *Id.* arts. 102, 103(1), 103.1.

102. *See id.* art. 103(1).

103. LA. CODE CIV. PROC. art. 561 (2023).

104. *Id.* art. 3954.

retroactively to the date of the filing of the original petition.¹⁰⁵ A longer-lasting community property regime may create more assets to which both spouses have a claim.¹⁰⁶

Should a decedent-spouse's divorce litigation continue following the decedent-spouse's death, the surviving spouse may want to oppose the successor's attempts to prosecute the divorce by asserting that the decedent-spouse abandoned his or her claim before death.¹⁰⁷ Successfully arguing that the divorce action was abandoned results in the termination of the divorce action.¹⁰⁸ The community will not terminate retroactively to the filing of the petition, and the marriage will be deemed terminated by the decedent-spouse's death, rather than divorce.¹⁰⁹ Thus, the surviving spouse would be entitled to the property rights associated with termination of the marriage by death, rather than the lack of property rights associated with termination by divorce.¹¹⁰

Further, the court will only grant a voluntary dismissal on the joint application of both parties or following a contradictory motion by the plaintiff.¹¹¹ Since either spouse can file the rule to show cause once the requisite time period for living separate and apart is met, regardless of which spouse filed the original petition for divorce, both parties must agree that they wish to dismiss the divorce.¹¹² If both spouses do not agree to dismiss by means of a joint application, the plaintiff may only have the case dismissed following a contradictory motion.¹¹³ As a safeguard, Louisiana Code of Civil Procedure article 3958 protects defendants from plaintiffs dismissing suits for the purpose of extending the community property regime, since the community property regime does not terminate until the court issues a judgment of divorce.¹¹⁴

2. *Termination of a Covenant Marriage by Divorce*

For a covenant marriage, the grounds available for divorce include fault-based and no-fault options but differ in some ways from the grounds

105. See LA. CIV. CODE art. 159.

106. See *id.*

107. See LA. CODE CIV. PROC. art. 3954.

108. See *id.*

109. See *id.* See LA. CIV. CODE art. 101.

110. See LA. CODE CIV. PROC. art. 3954; LA. CIV. CODE art. 2356.

111. LA. CODE CIV. PROC. art. 3958; Wallace, *supra* note 2, at 632–33.

112. LA. CODE CIV. PROC. art. 3958; Wallace, *supra* note 2, at 632–33.

113. LA. CODE CIV. PROC. art. 3958.

114. See *id.* See Wallace, *supra* note 2, at 632–33.

available for divorce in traditional marriages.¹¹⁵ The court may also grant a judicial separation between the parties, which is only allowed for covenant marriages.¹¹⁶ Either a divorce or a judicial separation will terminate the community property regime.¹¹⁷ To obtain a divorce in a covenant marriage, stricter requirements must be met, and a divorce may only be granted on the grounds enumerated in Louisiana Revised Statutes § 9:307.¹¹⁸ Further, covenant marriages may not be terminated by the mutual consent of the parties, and the grounds for no-fault divorce under traditional marriages do not apply.¹¹⁹ If the spouses are judicially separated at the time of the decedent's death, the surviving spouse cannot recover through intestacy.¹²⁰ However, should the decedent die with a will that leaves property to the surviving spouse, the surviving spouse's testacy rights will not be terminated until a judgment of divorce has been issued.¹²¹

3. *Defending Against the Divorce Petition*

Though either spouse may file for divorce in both traditional and covenant marriages, the non-filing spouse may defend against the petition for divorce.¹²² Louisiana Civil Code article 104 enumerates a single defense to divorce: reconciliation.¹²³ Louisiana courts require spouses to “exhibit a mutual intent to resume their marital relationship voluntarily” in order to find that reconciliation occurred.¹²⁴ The cause of action for

115. LA. REV. STAT. § 9:307 (2023); LA. CIV. CODE arts. 102–03.

116. LA. REV. STAT. § 9:307.

117. *Id.* § 9:309.

118. *Id.* § 9:307. The grounds include: (1) adultery; (2) a felony conviction and sentence to death or imprisonment at hard labor; (3) abandonment of the matrimonial domicile for a period of one year with constant refusal to return; (4) physical or sexual abuse of the other spouse or a child of one of the spouses; (5) when the spouses have lived separate and apart for two years; and (6) when the spouses live separate and apart following a judgment of separation for the requisite time period of either one year or one year and six months. *Id.* The court will generally only grant a divorce or judicial separation once the parties have attended counseling. *Id.*

119. *Id.* § 9:272.

120. *See* LA. CIV. CODE art. 1608(5).

121. *See id.*

122. *See id.* art. 104.

123. *Id.*

124. Wallace, *supra* note 2, at 656. If parties have reconciled following the incident of fault, a divorce can no longer be pursued based on that instance of fault. For example, should spouses reconcile after an instance of adultery, the later

divorce extinguishes if a party can prove reconciliation by a preponderance of the evidence.¹²⁵ If proven, a reconciliation mandates the filing of a new petition to obtain a divorce.¹²⁶

Further, should one spouse die during the pendency of a couple's divorce proceedings, the surviving spouse may argue that the spouses reconciled prior to the decedent-spouse's death, which would extinguish the divorce action and the marriage would be deemed to have terminated by death, not divorce.¹²⁷ If successful, the surviving spouse will be entitled to any property left to him or her through the decedent-spouse's will and may also be entitled to the decedent-spouse's estate through intestacy law.¹²⁸ To prevent the surviving spouse from attaining these benefits, the decedent-spouse's successors would want to oppose reconciliation.¹²⁹

However, should the court issue a judgment not favorable to one of the spouses, including a reconciliation ruling, both spouses have the opportunity to appeal to further defend their position.¹³⁰ A party may file an appeal whether the court grants or refuses to grant a divorce.¹³¹ However, the appeal must be made within 30 days from the expiration of the time to apply for a new trial or from the date of the court's refusal to grant a new trial.¹³² A judgment of divorce becomes a final judgment once the delays for taking an appeal have expired and neither party has filed an appeal.¹³³

4. *Effects of Termination by Divorce*

Overall, the termination of a marriage by divorce, rather than by death, produces different implications for the spouses.¹³⁴ In the presence of a valid will, when a marriage terminates by divorce, any provisions in the

reconciliation means that a divorce can no longer be granted on that instance of adultery. *Id.*

125. *Id.*

126. *See id.*

127. *See* LA. CIV. CODE art. 159.

128. *See id.* arts. 159, 880, 888–90, 1608(5).

129. *See id.* arts. 159, 880, 888–90, 1608(5).

130. *See* LA. CODE CIV. PROC. arts. 2087(A), 3942(A).

131. *Id.* Pending an appeal, the execution of judgments for claims related to the divorce, partition of community property, or other claims resulting from the matrimonial regime are suspended. *Id.* art. 3942(B).

132. *Id.* arts. 2087(A), 3942(A).

133. *Tarbutton v. Tarbutton*, 217 So. 3d 1281, 1285 (La. Ct. App. 2d Cir. 2017); LA. CODE CIV. PROC. arts. 2087(A), 3942(A).

134. *See* LA. CIV. CODE arts. 880, 888–90, 1608(5).

will in favor of the former spouse are revoked under Louisiana Civil Code article 1608(5) because the law presumes that a decedent no longer intends to leave property to their former spouse.¹³⁵ Even when there is no will present, a surviving spouse is generally provided for by the decedent-spouse's estate and receives either the community property burdenless or in a usufruct depending on whether the couple had children.¹³⁶ If the spouses are divorced at death, then the surviving former spouse is not entitled to these rights.¹³⁷ Thus, whether a marriage is terminated by divorce or by death, there will be different property right implications for the spouses.¹³⁸

C. Termination of the Marital Relationship by Nullity

Unlike divorce and death, when either a traditional or covenant marriage is found to be an absolute or relative nullity, it is deemed never to have existed.¹³⁹ An absolute nullity makes the marriage "incurably void," and occurs when: (1) there has been no marriage ceremony; (2) when there is an impediment; or (3) when it is a marriage by procuration.¹⁴⁰ In contrast, a relative nullity may be cured and occurs when both parties do not freely consent to the marriage.¹⁴¹

The civil effects of an absolutely null marriage, including the community property regime, depend on the circumstances that make the marriage an absolute nullity.¹⁴² When at least one of the parties contracted an absolutely null marriage in good faith, the civil effects continue for the party who contracted in good faith as long as the good faith remains.¹⁴³ However, when the cause of the nullity is one party's prior undissolved marriage and the other party contracted in good faith, the civil effects remain for the other party until the court declares the marriage null or the other party perfects a valid marriage.¹⁴⁴ Additionally, absolutely null

135. *Id.* art. 1608(5). While a divorce generally automatically revokes a testamentary disposition to a former spouse, those provisions will not be revoked if a decedent-spouse adequately provides their intent to continue leaving property to their former spouse. *Id.*

136. *See id.* arts. 880, 888–90.

137. *See id.* arts. 880, 888–90.

138. *See id.* arts. 159, 2338, 2341.

139. *See id.* arts. 94–97.

140. *Id.* art. 94; *Nullity*, BLACK'S LAW DICTIONARY (11th ed. 2019).

141. LA. CIV. CODE art. 95.

142. *Id.* art 96.

143. *Id.*

144. *Id.*

marriages produce civil effects in favor of the children of the marriage.¹⁴⁵ Regardless of the cause of nullity, marriage produces civil effects in favor of a child of the parties when the marriage was contracted in good faith.¹⁴⁶ Even without good faith, a marriage contracted with the impediment of age will produce civil effects in favor of a child of the parties.¹⁴⁷

In contrast to an absolute nullity, a relative nullity occurs only when the consent of one of the parties to the marriage was not freely given.¹⁴⁸ To declare a marriage relatively null, the party who did not give free consent may petition the court to declare the marriage null.¹⁴⁹ If the party lacking free consent later regains discernment or freedom and does not bring an action to declare the marriage null, the marriage is considered confirmed and the relative nullity is cured.¹⁵⁰ A relatively null marriage will continue producing civil effects until a declaration of nullity.¹⁵¹

Inheritance rights and the classification of property are greatly affected by how a marriage is terminated.¹⁵² However, it is not always clear when a marriage ends and why that marital relationship terminates.¹⁵³ For example, it is unclear whether a marriage terminates by death, divorce, or a nullity if a married couple is in the process of a divorce or annulment and one spouse dies before a final judgment of divorce or annulment has been rendered.¹⁵⁴

II. LITIGATING A DECEDENT'S DIVORCE AFTER THEIR DEATH

Historically, the ability to bring an action for annulment or divorce has been considered strictly personal to one of the parties to the marriage.¹⁵⁵ Generally, only one of the spouses can bring an action to terminate the marriage, not a party outside of the marriage.¹⁵⁶ Since only spouses can

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* art. 95.

149. *Id.*

150. *Id.*

151. *Id.* art. 97.

152. *Id.* arts. 96–97, 880, 888–90.

153. *See* *Arceneaux v. Arceneaux*, 94 So. 2d 449, 450 (La. 1957). *But see* *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992).

154. *See* *Arceneaux*, 94 So. 2d at 450. *But see* *LaRocca*, 597 So. 2d at 1007.

155. *LaRocca*, 597 So. 2d at 1004.

156. *Arceneaux*, 94 So. 2d at 450. *But see* *LaRocca*, 597 So. 2d at 1007.

bring an action for divorce, it is unclear whether such an action can continue upon the death of one of the spouses.¹⁵⁷

The issue of abatement arises when one of the spouses dies after a petition for divorce has been filed but before a final divorce judgment has been rendered.¹⁵⁸ In this scenario, the courts may consider the divorce action to be abated, meaning that the action “legally disappears, leaving the court without jurisdiction to enter a final decree.”¹⁵⁹ The court considers the marriage to have terminated by death, making a termination of the marriage by divorce unnecessary.¹⁶⁰ The result is that the couple is legally considered married at the time of death for succession purposes.¹⁶¹

Louisiana courts have taken different approaches to the issue of whether an action for divorce abates at the death of one of the spouses.¹⁶² The historical approach dictates that only the two spouses can litigate their divorce and that upon the death of one of the spouses, the divorce action abates.¹⁶³ However, in some cases, Louisiana courts have allowed a decedent’s successor to continue litigating a divorce following the decedent’s death.¹⁶⁴ These cases provide exceptions to the general rule of abatement and hinge on the procedural timing of the divorce and the type of property rights at stake in the divorce.¹⁶⁵

A. *The Historical Approach: Arceneaux v. Arceneaux*

The Louisiana Supreme Court’s holding in *Arceneaux v. Arceneaux* demonstrates the historical approach that views a divorce action as strictly personal and abates upon the death of one of the parties.¹⁶⁶ In *Arceneaux*, the Louisiana Supreme Court considered whether the death of one of the

157. See *Arceneaux*, 94 So. 2d at 450. But see *LaRocca*, 597 So. 2d at 1007.

158. 1 BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* § 3.3 (4th ed. 2023).

159. *Id.*

160. *Arceneaux*, 94 So. 2d at 450.

161. TURNER, *supra* note 158.

162. *Arceneaux*, 94 So. 2d at 450. But see *LaRocca*, 597 So. 2d at 1007.

163. See *Arceneaux*, 94 So. 2d at 450.

164. See *LaRocca*, 597 So. 2d at 1007; *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018).

165. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49.

166. *Arceneaux*, 94 So. 2d at 449.

parties to the divorce rendered the question of divorce moot.¹⁶⁷ The court held that the divorce action abated upon the death of one of the parties.¹⁶⁸

Eddie and Margaret Arceneaux were married, and in 1956, Eddie filed for divorce from Margaret on the ground of adultery.¹⁶⁹ Margaret did not file an answer, making the petition for divorce uncontested.¹⁷⁰ After a preliminary default, the court granted Eddie a divorce from Margaret.¹⁷¹ Days later, Eddie died.¹⁷² Margaret petitioned the court to substitute Eddie's minor son as plaintiff, appoint a curator ad-hoc¹⁷³ to represent him, and grant a suspensive appeal.¹⁷⁴ A successful appeal by Margaret would deem the marriage terminated by death, rather than divorce.¹⁷⁵ Such an outcome would benefit Margaret for succession purposes because Eddie and Margaret's community property regime would not have terminated until Eddie's death.¹⁷⁶ In accordance with Margaret's petition, the district court substituted Eddie with Eddie's son; appointed a curator ad-hoc to represent Eddie's son; and granted a suspensive appeal.¹⁷⁷

The curator ad-hoc filed a motion for the appeal's dismissal, arguing that divorce is a personal action that becomes moot upon the death of one of the parties to the divorce.¹⁷⁸ The Louisiana Supreme Court agreed and held that the divorce became moot upon Eddie's death.¹⁷⁹ Despite any divorce or separation action pending in any court, Eddie and Margaret's marriage completely dissolved at the time of Eddie's death.¹⁸⁰ Thus, the court held that it could not consider the appeal from the judgment of divorce without an existing marriage.¹⁸¹

The Louisiana Supreme Court also addressed whether Eddie and Margaret's marriage terminated due to divorce or death.¹⁸² While the

167. *Id.* at 450.

168. *Id.*

169. *Id.* at 449.

170. *Id.*

171. *Id.*

172. *Id.*

173. A curator ad-hoc is “[a] court-appointed curator who manages a single matter or transaction.” A curator is “[s]omeone who manages the affairs of another.” *Curator*, BLACK'S LAW DICTIONARY (11th ed. 2019).

174. *Arceneaux*, 94 So. 2d at 450.

175. *See* LA. CIV. CODE art. 2356 (2023).

176. *See id.*

177. *Arceneaux*, 94 So. 2d at 450.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

district court granted a divorce judgment to Eddie before his death, the Louisiana Supreme Court held that this was not a final judgment because Eddie died before the delays to appeal the default judgment had run.¹⁸³ Since the divorce judgment was not final, the court held that Eddie and Margaret's marriage dissolved due to Eddie's death and not as a result of divorce.¹⁸⁴ Thus, Margaret was considered Eddie's surviving spouse upon his death, entitling Margaret to the benefits associated with that designation.¹⁸⁵ Although time remained for Margaret to file an appeal after Eddie's death, the Louisiana Supreme Court treated the divorce as a strictly personal action.¹⁸⁶ By treating the divorce as strictly personal as to the spouses, Eddie and Margaret were the only individuals able to continue their divorce litigation.¹⁸⁷ Eddie's absence by virtue of his death prevented any further litigation, and the divorce action abated.¹⁸⁸

B. LaRocca v. LaRocca

While *Arceneaux* demonstrates the general rule that a divorce action abates upon the death of one of the parties, the Louisiana Supreme Court's decision in *LaRocca v. LaRocca* marks a surprising and fundamental shift away from the established law in *Arceneaux* that characterized divorce actions as strictly personal.¹⁸⁹ In *LaRocca*, the court permitted the decedent's successors to continue litigating the decedent's divorce following the decedent's death.¹⁹⁰ However, Louisiana courts have not consistently applied *LaRocca*'s holding, making it unclear exactly what circumstances are sufficient to avoid abatement.¹⁹¹ In *LaRocca*, the court considered whether a decedent's child could continue to litigate an appeal for a divorce action when the decedent had filed the appeal but died during the pendency of the appeal.¹⁹² Particularly, the court addressed whether a successor could continue this litigation under circumstances where the

183. *Id.*

184. *Id.*

185. *See id.* *But see* *Woodmen v. Arceneaux*, 112 So. 2d 148, 149 (La. Ct. App. 1st Cir. 1959) (holding that Eddie and Margaret's divorce proceedings were sufficient to effectively revoke Margaret's designation as beneficiary of Eddie's life insurance policy).

186. *See Arceneaux*, 94 So. 2d at 450.

187. *See id.*

188. *See id.*

189. *Id.* at 449; *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992).

190. *LaRocca*, 597 So. 2d at 1007.

191. *See McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

192. *LaRocca*, 597 So. 2d at 1003.

divorce action included property rights pled in and intertwined with the divorce action.¹⁹³

Isabelle and Carlo LaRocca were married in 1971.¹⁹⁴ Isabelle had three children from a prior marriage.¹⁹⁵ After a period of voluntary separation, the court rendered a judgment of separation against Isabelle on the ground of abandonment.¹⁹⁶ Isabelle suspected Carlo of adultery and hired private investigators to monitor his activities.¹⁹⁷ Once the couple had voluntarily lived separate for the period of one year, Carlo filed a suit for divorce.¹⁹⁸ In response, Isabelle filed a reconventional demand,¹⁹⁹ seeking divorce based on adultery.²⁰⁰

In contemplation of marriage, Isabelle donated property to Carlo.²⁰¹ Under the law applicable at the time of the divorce, a divorce granted on the grounds of Carlo's fault would revoke Isabelle's donation.²⁰² The court

193. *Id.* at 1007.

194. *Id.* at 1000.

195. *Id.* at 1001.

196. *Id.* At the time of *LaRocca v. LaRocca*, divorce law in Louisiana differed substantively from current Louisiana divorce law, particularly with respect to judicial separation. During the course of litigation, the "Legislature effected a comprehensive revision of the laws pertaining to the termination of marriages which eliminated any provision for or references to legal separation." *Id.* at 1007 n.3. Louisiana Civil Code article 101 comment c states that: "The source Article's reference to the effect of separation from bed and board has been omitted because this revision does not provide for legal separation." LA. CIV. CODE ANN. art. 101 cmt. c (2023).

197. *LaRocca*, 597 So. 2d at 1001.

198. *Id.*

199. A reconventional demand is a "plea by which a defendant asserts any claim that it has against the plaintiff, or any offset against the plaintiff's claim . . . similar to the common-law counterclaim." *Demand*, BLACK'S LAW DICTIONARY (11th ed. 2019).

200. *LaRocca*, 597 So. 2d at 1001.

201. *Id.*

202. *Id.* By the time *LaRocca v. LaRocca* reached the Louisiana Supreme Court, Louisiana Civil Code article 156 had been repealed and Louisiana Civil Code article 159 had been amended. The court determined that because this change was substantive, it should not be applied retroactively, and the former provisions should apply to the present case. At the time the action began, article 156 provided:

In case of separation from bed and board, the party against whom it shall be pronounced, shall lose all the advantages or donations, the other party may have conferred by the marriage contract or since, and the party at whose instance the separation has been obtained, shall preserve all those to which such party would have been entitled; and these dispositions are

rendered a judgment of divorce in favor of Isabelle, effectively revoking the donations made to Carlo in contemplation of marriage.²⁰³ Carlo, however, timely moved for a new trial, arguing that the district court should have granted a directed verdict for Carlo following Isabelle's case.²⁰⁴ The district court granted a new trial and reversed the prior judgment.²⁰⁵ Isabelle appealed this judgment but died during the appeal's pendency.²⁰⁶

Upon Isabelle's death, Isabelle's daughter, Beverly, was designated as Isabelle's testamentary executrix.²⁰⁷ An order from the Louisiana Third Circuit Court of Appeal substituted Beverly for her mother in the divorce proceedings.²⁰⁸ On its own motion, the Third Circuit held that Isabelle's death abated the entire divorce action because a divorce is a strictly personal action.²⁰⁹ The dissent noted that "substantial property interests" at stake in this divorce action should provide an exception to the general rule that divorces are strictly personal actions because any decision by the court would have substantial effects on property rights.²¹⁰

The Louisiana Supreme Court reversed the Third Circuit Court of Appeal's decision, holding that the divorce action did not abate upon Isabelle's death.²¹¹ The Louisiana Supreme Court found that the "substantial property interest" pled in the divorce action distinguished it from any other divorce without intertwined property rights, opening the door to more divorce-related litigation until the divorce was fully litigated.²¹² The court also noted that a divorce granted based on Carlo's fault would determine whether property donated to Carlo would remain

to take place even in case the advantages and donations were reciprocally made.

Prior to the revision of article 159, article 159 provided in part: "The effects of a divorce shall not only be the same as are determined in the case of separation from bed and board" *Id.* at 1007 n.2.

203. *Id.* at 1002.

204. *Id.*

205. *Id.* at 1003.

206. *Id.*

207. *Id.* An executor is "[a] person named by a testator to carry out the provisions in the testator's will." An executrix is a female executor. *Executor*, BLACK'S LAW DICTIONARY (11th ed. 2019); *Executrix*, BLACK'S LAW DICTIONARY (11th ed. 2019).

208. *LaRocca*, 597 So. 2d at 1003.

209. *Id.*

210. *Id.*

211. *Id.* at 1007.

212. *Id.*

with him or go to Isabelle's children.²¹³ The court's decision to grant a divorce based on Carlo's fault automatically revoked the donations made to Carlo by Isabelle.²¹⁴ Isabelle's children received the property instead of Carlo.²¹⁵ By allowing Isabelle's daughter to continue prosecuting this case, her inheritance increased following the judgment in her favor.²¹⁶ In support of its reasoning, the Louisiana Supreme Court looked to common law jurisdictions and their handling of similar issues.²¹⁷ The court noted that most common law jurisdictions would allow litigation to continue in this context when the litigation would otherwise be considered a strictly personal action.²¹⁸ In particular, the court discussed cases from Oregon, Arkansas, and Texas with similar holdings.²¹⁹

While the general rule found in *Arceneaux* demonstrated that divorce actions are strictly personal, the Louisiana Supreme Court in *LaRocca* carved out an exception to the general rule, finding that divorce actions are not strictly personal when there are substantial property rights involved.²²⁰ While the rights associated with the marital relationship itself are considered extra-patrimonial, or not subject to pecuniary valuation, the property rights involved are patrimonial.²²¹ Extra-patrimonial rights, unlike patrimonial rights, are not transmitted at the death of one of the spouses or divided upon divorce or another termination of the community property regime.²²² *LaRocca* provided an exception to *Arceneaux*'s rule that the ability to terminate the marital relationship itself was strictly

213. *Id.* at 1006–07.

214. *See id.* at 1007.

215. *Id.*

216. *See id.* at 1006–07.

217. *Id.* at 1005–06.

218. *Id.* at 1005.

219. *Id.* *See* Nickerson v. Nickerson, 48 P. 423, 424 (Or. 1897) (holding that when a divorce affects the property rights of the parties, successors may have an interest in the litigation that survives past the death of one of the parties to the divorce suit); Owen v. Owen, 184 S.W.2d 808, 810 (Ark. 1945) (holding that a party's right to appeal, and potentially have reversed, a divorce judgment against him or her, does not terminate merely because one of the parties died before the appeal's adjudication); Dunn v. Dunn, 439 S.W.2d 830, 834 (Tex. 1969) (holding that the issue of divorce did not become moot upon the death of one of the parties because the parties' property rights would be affected, depending on the outcome of the case).

220. *Compare LaRocca*, 597 So. 2d at 1007, with *Arceneaux v. Arceneaux*, 94 So. 2d 449, 450 (La. 1957).

221. CARROLL ET AL., *supra* note 39, § 2:3.

222. *Id.*

personal because of the patrimonial property rights at stake in the divorce litigation.²²³ The continued litigation of the LaRocca's divorce following Isabelle LaRocca's death centered around the patrimonial property rights; rather than the termination of the marital relationship and any associated extra-patrimonial rights and duties between Isabelle and Carlo.²²⁴ Thus, continued litigation of a divorce proceeding following a decedent-spouse's death simply acts as an avenue to appropriately allocate those patrimonial property rights, rather than terminating the marital relationship itself.²²⁵

C. *The Application of LaRocca by Louisiana Courts*

The *LaRocca* exception to *Arceneaux's* general rule opened the door to uncertainty for Louisiana courts.²²⁶ While Louisiana courts have maintained that divorce actions are strictly personal and abate upon the death of one of the spouses, it is unclear how broadly *LaRocca's* exception should be applied.²²⁷ Louisiana courts have considered and continued to apply *LaRocca's* holding, particularly in the cases of *Cannatella v. Cannatella*, *McCann v. McCann*, and *In Re Succession of Buhler*. However, the courts' application of this exception fails to clarify and delineate its extent.²²⁸

1. *Cannatella v. Cannatella*

In *Cannatella v. Cannatella*, the Louisiana Fifth Circuit Court of Appeal applied *LaRocca's* holding when one of the parties died following a judgment of divorce and after filing a motion for a new trial.²²⁹ Further, *Cannatella* expanded the property rights necessary to avoid abatement to include pending claims for the partition of community property.²³⁰ This expansion in *Cannatella* suggests that *LaRocca's* holding may be broadly

223. Compare *LaRocca*, 597 So. 2d at 1007, with *Arceneaux*, 94 So. 2d at 450.

224. See *LaRocca*, 597 So. 2d at 1006–07.

225. See *id.* at 1007; CARROLL ET AL., *supra* note 39, § 2:3.

226. See *Arceneaux*, 94 So. 2d at 450; *LaRocca*, 597 So. 2d at 1007.

227. See *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *LaRocca*, 597 So. 2d at 1007.

228. *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–396; *McCann v. McCann*, 93 So. 3d 544, 549–53 (La. 2012); *In re Succession of Buhler*, 243 So. 3d 39, 47–50 (La. Ct. App. 1st Cir. 2018).

229. *Cannatella*, 91 So. 3d at 394–395.

230. *Id.* at 396.

applied to most divorce actions because most couples have some community property issues at stake in their divorce.²³¹

Here, Cynthia and Anthony Cannatella married in 1981.²³² In 2010, Cynthia filed a Petition for Divorce from Anthony pursuant to Louisiana Civil Code article 103(2), alleging that Anthony committed adultery.²³³ In the alternative, Cynthia sought a divorce pursuant to Louisiana Civil Code article 102, based on living separate and apart for 180 days from the service of the petition.²³⁴ In a reconventional demand, Anthony denied the allegations of adultery and sought a divorce under article 102 or, alternatively, under article 103(1).²³⁵

At trial, Anthony admitted that the allegations of adultery were true.²³⁶ Cynthia hired a licensed investigator to confirm Anthony's adulterous acts.²³⁷ At trial, the investigator testified that her observations of Anthony were consistent with adultery.²³⁸ At the conclusion of the testimony, the judge indicated that determinations of fault would take place at a later date and granted the parties a no-fault divorce under article 103(1). However, a divorce based on Anthony's fault would be preferable to Cynthia.²³⁹ In such a situation, Cynthia would be presumed free from fault in the divorce, and Anthony would be precluded from receiving final periodic support from Cynthia.²⁴⁰ Thus, Cynthia later filed a motion for a new trial, arguing that the evidence did not support the judgment of divorce.²⁴¹ The court set the motion for a new trial but Anthony died before it could occur.²⁴²

The Fifth Circuit held that the evidence presented at trial established the requirements for an article 103(2) divorce based on Anthony's adultery, although the district court judge declined to grant a divorce on the ground of adultery.²⁴³ Although the divorce action itself is strictly personal, the court noted that the divorce action did not extinguish at Anthony's death because ancillary claims to the divorce affected the parties' property interests; therefore, the claims were not strictly

231. *See id.*

232. *Id.* at 393.

233. *Id.*

234. *Id.* at 393–94.

235. *Id.* at 394.

236. *Id.*

237. *Id.*

238. *Id.*

239. *See* LA. CIV. CODE art. 112 (2023).

240. *Cannatella*, 91 So. 3d at 394.

241. *Id.*

242. *Id.*

243. *Id.* at 396.

personal.²⁴⁴ Since the divorce action did not abate upon Anthony's death, the decision suggests that the action would not extinguish until fully litigated.²⁴⁵

2. McCann v. McCann

In *Cannatella*, the court applied and rendered a decision consistent with *LaRocca*.²⁴⁶ In *McCann v. McCann*, the Louisiana Supreme Court considered *LaRocca* but ultimately decided the case on a jurisdictional statute rather than the validity of the *LaRocca* exception.²⁴⁷ The court was called upon to “determine whether the Family Court for the Parish of East Baton Rouge Parish [sic] retain[ed] subject matter jurisdiction over a proceeding for the partition of community property” after one of the spouses died prior to any determination made by the court.²⁴⁸ Applying the jurisdictional statute, the Louisiana Supreme Court held that the family court lost jurisdiction over the divorce and related proceedings upon the death of one of the parties to the divorce.²⁴⁹

Rose and Walter McCann were married, and, in 2009, Rose filed a petition for divorce against Walter in the Family Court for the Parish of East Baton Rouge.²⁵⁰ Upon a motion for judgment of separation of property, the family court terminated the community property regime retroactive to the date of the motion.²⁵¹ The court later granted a judgment of divorce; however, community property issues were left outstanding.²⁵² Rose then filed a petition for partition of community property, but shortly after, Walter died.²⁵³ Succession proceedings began, and Rose wished to continue the partition of community property.²⁵⁴ The representative for Walter filed an exception of improper venue and a motion to transfer venue.²⁵⁵

The trial court, citing *LaRocca*, held that the action to partition community property was heritable and not strictly personal, and the

244. *Id.* at 397.

245. *See id.*

246. *See id.*

247. *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

248. *Id.* at 545.

249. *Id.* at 550.

250. *Id.* at 545.

251. *Id.* at 545–46.

252. *Id.* at 546.

253. *Id.*

254. *Id.*

255. *Id.* at 547.

appellate court affirmed.²⁵⁶ The Louisiana Supreme Court reversed, holding that the family court did not retain subject matter jurisdiction over the community property partition following Walter's death.²⁵⁷ While the court offered no disagreement to the trial and appellate court's arguments that the *LaRocca* exception provides that property rights involved in divorce litigation are heritable and that property-related litigation can be continued by successors, the court ultimately determined that the applicable jurisdictional statute failed to leave the family court with jurisdiction under these circumstances.²⁵⁸

Under Louisiana Revised Statutes § 13:1401, a family court has jurisdiction over "all actions between spouses or former spouses for partition of community property and property acquired pursuant to a matrimonial regime."²⁵⁹ The court reasoned that this statute did not provide for jurisdiction when one of the former spouses dies and when a representative steps in.²⁶⁰ The action does not remain between spouses but transforms into an action against a spouse and a third party to the marriage.²⁶¹

In dissent, Justice Weimer cited *LaRocca*, arguing that divorce actions are strictly personal, but the resolution of property interests are heritable.²⁶² Thus, Justice Weimer thought the court should maintain jurisdiction over matters *arising from* a matrimonial regime when those matters are property interests.²⁶³ Justice Weimer further noted that the majority's approach promotes judicial inefficiency because it disregards the work already completed by the family court and requires separate litigation.²⁶⁴ However, unlike *LaRocca*, the *McCann* case involved a finalized divorce.²⁶⁵ If the litigation continued, it would focus on divorce-related issues and not the divorce itself.²⁶⁶ Further, the holding in *McCann* was constricted by its application of the jurisdictional statute.²⁶⁷ Rather than determining whether the divorce action itself abated, the court applied the jurisdictional statute and found that the family court no longer retained

256. *Id.* at 549.

257. *Id.* at 550.

258. *Id.* at 549–50.

259. *Id.* at 549.

260. *Id.* at 550–51.

261. *Id.* at 551.

262. *Id.* at 552 (Weimer, J., dissenting).

263. *Id.*

264. *Id.*

265. *Id.* at 545.

266. *Id.*

267. *Id.* at 550.

jurisdiction over the case.²⁶⁸ In absence of this jurisdictional statute, the court may have found that an application of *LaRocca* to the facts of the case would be sufficient to avoid abatement.²⁶⁹

3. In Re Succession of Buhler

In *In re Succession of Buhler*, the Louisiana First Circuit Court of Appeal also applied the *LaRocca* exception carved out by the Louisiana Supreme Court and later applied by the Fifth Circuit in *Cannatella*.²⁷⁰ The First Circuit, however, not only applied *LaRocca* but demonstrated a willingness to extend its holding to allow successors to continue litigating a decedent's divorce action in broader circumstances than in *LaRocca* and *Cannatella*.²⁷¹ In particular, *Buhler* applied *LaRocca*'s holding to different property rights and at a different stage of the divorce litigation.²⁷²

Mark and Betty Buhler first married in 1988 and subsequently divorced in 1994.²⁷³ Mark and Betty remarried in 2000.²⁷⁴ During Mark and Betty's second marriage, Mark executed his "Last Will and Testament," which provided that his wife, Betty, would receive all his property upon his death.²⁷⁵ Mark also designated Betty as his testamentary executrix.²⁷⁶

In 2014, Betty filed a Petition for Divorce.²⁷⁷ More than six months later, Mark filed a Rule to Show Cause, in accordance with the requirements in Louisiana Civil Code article 103.1.²⁷⁸ Mark then died after the court granted a divorce judgment but before the delay to take an appeal expired.²⁷⁹ Following Mark's death, Betty alleged that she was Mark's

268. *Id.* at 549–50.

269. *See id.* *See* *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992).

270. *See LaRocca*, 597 So. 2d at 1007; *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012).

271. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

272. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49.

273. *Buhler*, 243 So. 3d at 42.

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.* *See* LA. CIV. CODE art. 103.1 (2023).

279. *Buhler*, 243 So. 3d at 42.

wife at the time of his death in a Petition for Probate of Statutory Testament.²⁸⁰ The trial court confirmed her appointment as executrix.²⁸¹

However, Mark's daughter, Nickie, sought revocation of Betty's appointment as executrix, arguing that Betty and Mark were divorced at the time of Mark's death.²⁸² If Mark and Betty were divorced at Mark's death, Louisiana Civil Code article 1608(5) would apply, which would revoke any testamentary provisions and appointments made by Mark in favor of Betty.²⁸³ In response to Nickie's argument, Betty argued that her marriage to Mark had not terminated by divorce before Mark's death because the initial judgment of divorce was not final, given that the appeals delay had not yet expired.²⁸⁴ Thus, Betty argued that article 1608(5) would not apply, and Mark's will should be executed as written.²⁸⁵

The First Circuit held that the divorce did not abate upon Mark's death.²⁸⁶ Thus, Betty had the opportunity to appeal the initial judgment of divorce before the appeals delay ran.²⁸⁷ Absent Betty's timely appeal, the divorce judgment became "final and definitive."²⁸⁸ The court noted that divorce actions generally abate upon the death of one of the parties.²⁸⁹ However, the court applied the reasoning from *LaRocca*, which found that a divorce action does not abate when there are property rights intertwined with the divorce action.²⁹⁰ Unlike *LaRocca*, the property interests at stake were only raised on appeal and not "pled in the divorce action itself" or specifically addressed in the divorce judgment, which broadens *LaRocca*'s holding.²⁹¹ In particular, the court found that inextricable property rights included legacies and testamentary provisions, because only a judicial decree terminating the marriage would revoke those legacies and testamentary provisions.²⁹² Additionally, the court noted that most other common law jurisdictions would allow continued litigation of this divorce, although it would otherwise be considered a strictly personal action.²⁹³

280. *Id.*

281. *Id.*

282. *Id.*

283. LA. CIV. CODE art. 1608(5).

284. *Buhler*, 243 So. 3d at 46.

285. *Id.*

286. *Id.* at 49.

287. *Id.*

288. *Id.*

289. *Id.* at 46.

290. *Id.* at 47.

291. *Id.*

292. *Id.* at 48–49.

293. *Id.* at 48.

Not only did *Buhler* apply the Louisiana Supreme Court's holding in *LaRocca*, it also extended the ruling to a broader set of circumstances; namely, the sufficient procedural status of the litigation and the requisite property rights that allow a successor to continue the decedent-spouse's divorce litigation.²⁹⁴ *Buhler* allowed a successor to substitute the decedent-spouse when the decedent-spouse died following a judgment of divorce but before the appeals delay had run.²⁹⁵ Before *Buhler*'s holding, jurisprudence only allowed the successor to continue the decedent-spouse's divorce action if the death occurred after an appeal had been filed.²⁹⁶ Additionally, *Buhler* extended *LaRocca* when it deemed that property rights sufficient to avoid abatement included succession rights, even if those rights were not pled in the divorce action itself.²⁹⁷ However, no clear guidelines exist within legislation or jurisprudence to determine what is sufficient for a divorce to avoid abatement.²⁹⁸ Thus, Louisiana law is unclear with respect to the continuance of divorce litigation after a spouse's death.²⁹⁹ While the historical approach in *Arceneaux* holds that divorce actions are strictly personal, and never survive the death of one of the spouses, the exceptions established in jurisprudence now suggest that all divorce actions survive death because of the presence of testate or intestate succession rights and issues related to the spouses' community property.³⁰⁰

D. Expansion of Successors' Rights in Succession of Ricks and Wederstrandt v. Kol

While *LaRocca*, *Cannatella*, *McCann*, and *Buhler* together demonstrate the unclear approach taken by Louisiana courts when determining whether a divorce action abates upon the death of one of the spouses, Louisiana courts have ruled somewhat more consistently on the

294. See *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *Buhler*, 243 So. 3d at 49.

295. *Buhler*, 243 So. 3d at 49.

296. *Id.*

297. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49.

298. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49.

299. See *LaRocca*, 597 So. 2d at 1007; *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *Buhler*, 243 So. 3d at 49; *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

300. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 395–96; *Buhler*, 243 So. 3d at 49; *McCann*, 93 So. 3d at 550.

issue of nullity of marriage.³⁰¹ Historically, actions to annul marriages were considered strictly personal and could only be brought by one of the spouses, like divorce actions.³⁰² In *Succession of Ricks* and *Wederstrandt v. Kol*, the Louisiana First Circuit Court of Appeal allowed successors to bring new actions after the death of a decedent to annul the decedent's marriage.³⁰³ *Ricks* explicitly allows this, albeit in a poorly reasoned opinion.³⁰⁴ In contrast, *Wederstrandt* glosses over the issue by sustaining an exception of no cause of action on grounds other than the ability of a successor to bring this action after death, thus suggesting that courts unquestioningly accept that successors may bring these types of actions.³⁰⁵

1. Succession of Ricks

Like the expansion of successors' rights in *LaRocca*, *Cannatella*, and *Buhler*, the Louisiana First Circuit Court of Appeal demonstrated a similar expansion to the rights of succession representatives in *Succession of Ricks*.³⁰⁶ The court considered whether a succession representative can bring an action to annul a decedent's marriage.³⁰⁷ However, the ability to request the court to annul a marriage has been considered a strictly personal action that can only be brought by one of the parties to the marriage.³⁰⁸

Aleta and Noel Ricks were married.³⁰⁹ During their marriage, in 1996, Noel wrote a will leaving half of his estate to Aleta and the other half to his four children, subject to Aleta's usufruct.³¹⁰ Noel's will also designated Aleta as testamentary executrix.³¹¹ Noel and Aleta divorced in 2000.³¹² Under Louisiana Civil Code article 1608(5), the divorce would revoke Noel's testamentary provisions in favor of Aleta, but only if the parties

301. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 395–96; *Buhler*, 243 So. 3d at 49; *In re Succession of Ricks*, 893 So. 2d 98, 100 (La. Ct. App. 1st Cir. 2004); *Wederstrandt v. Kol*, 353 So. 3d 833, 837 (La. Ct. App. 1st Cir. 2022), *cert. granted*, 352 So. 3d 966 (La. 2023).

302. *Ricks*, 893 So. 2d at 100.

303. *Id. Wederstrandt*, 353 So. 3d at 834–37.

304. *Ricks*, 893 So. 2d at 100.

305. *Wederstrandt*, 353 So. 3d at 837.

306. See *Ricks*, 893 So. 2d at 100.

307. *Id.*

308. *Id.*

309. *Id.* at 98.

310. *Id.*

311. *Id.*

312. *Id.*

remained divorced at the time of Noel's death.³¹³ However, hours before Noel's death, Aleta and Noel remarried in Noel's hospital room.³¹⁴ The second marriage secured Aleta's legatee status.³¹⁵ Noel's children sought to have Aleta's designation as testamentary executrix revoked and the second marriage between Noel and Aleta annulled, alleging that Aleta took advantage of Noel's infirmity to regain her legatee status.³¹⁶ Noel's children alleged that at the time of the second marriage, Noel lacked the capacity to enter into a marriage contract because Noel was heavily sedated for pain and had an elevated white blood cell count.³¹⁷ Aleta argued that the action to annul a marriage is strictly personal, meaning that only Noel could have raised this action, and the cause of action extinguished at Noel's death.³¹⁸

The First Circuit held that succession representatives are proper plaintiffs to sue for enforcement of the decedent's rights, regardless of whether those actions are "personal, real, or mixed," citing to Louisiana Code of Civil Procedure article 685.³¹⁹ The court acknowledged that prior cases found the right to demand nullity of marriage to be a personal action that could only be brought by the party whose consent was lacking.³²⁰ However, the court found that the enactment of article 685 subsequent to the prior cases was "emphatic enough" to indicate that the legislature intended to overrule the previous cases.³²¹

The First Circuit's reasoning in *Ricks*, however, confused the concepts of personal actions with strictly personal rights.³²² Personal actions are actions to enforce obligations and are either strictly personal or

313. *Id.*

314. *Id.* at 99.

315. *Id.*

316. *Id.*

317. *Id.* at 100 n.1.

318. *Id.* at 99.

319. *Id.* at 100. Louisiana Code of Civil Procedure article 685 states:

Except as otherwise provided by law, the succession representative appointed by a court of this state is the proper plaintiff to sue to enforce a right of the deceased or of his succession, while the latter is under administration. The heirs or legatees of the deceased, whether present or represented in the state or not, need not be joined as parties, whether the action is personal, real, or mixed.

LA. CODE CIV. PROC. art. 685 (2023).

320. *Ricks*, 893 So. 2d at 100.

321. *Id.*

322. RONALD J. SCALISE, THE LAW OF OBLIGATIONS § 4.11, in 5 LOUISIANA CIVIL LAW TREATISE (2d ed. 2022).

heritable.³²³ While Louisiana Code of Civil Procedure article 685 states that a succession representative is the proper party to bring personal actions, it is understood that the Code of Civil Procedure means only *heritable* personal actions, not strictly personal actions.³²⁴ An action to annul a marriage is strictly personal and abates at death such that no one can represent the decedent in those actions.³²⁵ Thus, the First Circuit incorrectly applied Louisiana Code of Civil Procedure article 685 to include the strictly personal action of annulling a marriage.³²⁶

The court in *Ricks* did not cite to or discuss *LaRocca*, thereby missing an opportunity to provide clear and accurate theoretical support for its decision that a succession representative was the proper party to initiate an action to annul a marriage, even after a decedent's death.³²⁷ Though the court relied on faulty reasoning, *LaRocca* provides a theoretical justification for allowing a succession representative to bring an action to annul a marriage following a decedent's death.³²⁸ While the rights and duties involved in marriage are extra-patrimonial, the successors in *Ricks* wanted to annul the marriage because of the *property* rights at stake.³²⁹

Similar to *LaRocca*, the Louisiana First Circuit Court of Appeal in *Ricks* allowed for succession representatives to pursue a decedent's claims, even claims that have historically been treated as strictly personal.³³⁰ Taken together, these cases demonstrate a liberalization of the succession representative's ability to pursue a decedent's claims, even when those claims had been considered strictly personal.³³¹ Further, *Ricks* allowed for successors to *initiate* an action for nullity, taking a step beyond merely substituting a party in an existing action.³³² To date, no court has considered whether a successor has the right to initiate a divorce.³³³ The

323. *Id.*

324. LA. CODE CIV. PROC. art. 685. *See* SCALISE, *supra* note 322, § 4.11.

325. SCALISE, *supra* note 322, § 4.11.

326. *Id.* *See* LA. CODE CIV. PROC. art. 685.

327. *See* *In re Succession of Ricks*, 893 So. 2d 98, 100 (La. Ct. App. 1st Cir. 2004); *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); SCALISE, *supra* note 322, § 4.11.

328. SCALISE, *supra* note 322, § 4.11.

329. A personal action is one brought to enforce an obligation against the obligor, personally and independently of the property which he may own, claim, or possess. LA. CODE CIV. PROC. art. 422.

330. *See LaRocca*, 597 So. 2d at 1007; *Ricks*, 893 So. 2d at 100.

331. *See LaRocca*, 597 So. 2d at 1007; *Ricks*, 893 So. 2d at 100.

332. *See Ricks*, 893 So. 2d at 100.

333. *See LaRocca*, 597 So. 2d at 1007; *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Cannatella v. Cannatella*, 91 So. 3d 393, 394—

wide expansion of successors' rights in nullity cases raises questions regarding how far those rights extend in pending divorce actions.³³⁴

2. *Wederstrandt v. Kol*

In *Wederstrandt v. Kol*, the Louisiana First Circuit Court of Appeal brushed over the issue of abatement.³³⁵ *Wederstrandt* considered whether a successor could bring an action to declare a marriage absolutely null.³³⁶ While the court considered under what grounds a marriage may be declared absolutely null, it failed to address whether the action to annul a marriage abated upon the death of one of the spouses.³³⁷

Ivie Efferson and Eden Kol were married.³³⁸ Following Ivie's death, Ivie's parents, Amy Wederstrandt and Billy Efferson, Jr., filed a suit to declare the marriage between Ivie and Eden absolutely null, arguing that the object of Ivie and Eden's marriage contract violated public policy because they allegedly married for the purpose of violating federal immigration law.³³⁹ Under the general rules for the nullity of a conventional obligation, any obligation whose object violates public policy is considered absolutely null.³⁴⁰

In response, Eden filed an exception of no cause of action.³⁴¹ In his exception, Eden argued that the rules governing conventional obligations do not apply to the laws of marriage, and that the only grounds under which a marriage is an absolute nullity are found in Louisiana Civil Code article 94.³⁴² Louisiana Civil Code article 94 does not provide for the annulment of a marriage contract when the contract's object is in violation of public policy.³⁴³ The Louisiana First Circuit Court of Appeal held that the trial court correctly granted Eden's exception for no cause of action.³⁴⁴

96 (La. Ct. App. 5th Cir. 2012); *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

334. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *McCann*, 93 So. 3d at 550; *Ricks*, 893 So. 2d at 100; *Wederstrandt v. Kol*, 353 So. 3d 833, 834–37 (La. App. 1st Cir. 2022), *cert. granted*, 352 So. 3d 966 (La. 2023).

335. *Wederstrandt*, 353 So. 3d at 834–37.

336. *Id.* at 834–35.

337. *Id.* at 834–37.

338. *Id.* at 834.

339. *Id.*

340. LA. CIV. CODE art. 2030 (2023).

341. *Wederstrandt*, 353 So. 3d at 835.

342. *Id.*

343. LA. CIV. CODE art. 94.

344. *Wederstrandt*, 353 So. 3d at 837.

Further, the court found that Amy and Billy could not amend their petition because they would be unable to state a cause of action for nullity pursuant to Louisiana Civil Code article 94.³⁴⁵ The court reasoned that the only grounds applicable to find a marriage an absolute nullity are located in Louisiana Civil Code article 94 and the general rules of conventional obligations do not apply to marriages.³⁴⁶

Both the majority opinion and the dissent failed to consider whether the action to declare the marriage an absolute nullity abated upon Ivie's death.³⁴⁷ If the court declared the marriage absolutely null, the property ramifications would be more serious than if the marriage were declared relatively null since absolutely null marriages produce no civil effects.³⁴⁸ Thus, a declaration that the marriage was absolutely null would, in effect, deny the existence of any civil effects flowing in favor of either Ivie or Eden.³⁴⁹

On a writ, the Louisiana Supreme Court affirmed the First Circuit's decision, finding the First Circuit correctly affirmed the trial court's grant of Eden's exception of no cause of action.³⁵⁰ The Louisiana Supreme Court determined that the grounds for which a marriage can be annulled are found within article 94 and those grounds are exclusive.³⁵¹ Notably, the court pointed out that article 94 contains "no catchall provision," suggesting that the legislature intended the grounds in article 94 to be exclusive.³⁵² Since Amy and Billy failed to state a cause of action under one of the grounds to annul a marriage enumerated in article 94, the court determined that Eden's exception of no cause of action should be granted.³⁵³

In his concurrence, Justice McCallum raised the argument that an action to annul a marriage may only be brought by one of the parties to the marriage, thus suggesting that an annulment action cannot be brought after death.³⁵⁴ Out of seven Louisiana Supreme Court Justices and the three Louisiana First Circuit Court of Appeal judges considering this case, only

345. *Id.*

346. *Id.* at 836.

347. *See id.* at 834–37.

348. LA. CIV. CODE arts. 96–97.

349. *See id.* *See Wederstrandt*, 353 So. 3d at 836–37.

350. *Wederstrandt v. Kol*, 366 So. 3d 47 (La. 2023).

351. *Id.* at 52.

352. *Id.* at 51.

353. *Id.* at 55.

354. *Id.* at 60–63.

Justice McCallum issued an opinion raising this argument.³⁵⁵ This suggests that Louisiana courts generally unquestioningly accept successors' ability to bring an annulment action after the death of one of the spouses.³⁵⁶ Historically, and as raised by Justice McCallum's concurrence in *Wederstrandt*, the action to annul a marriage was considered strictly personal.³⁵⁷ However, Louisiana courts have demonstrated a willingness to expand successors' rights.³⁵⁸ This is illustrated in *Ricks* and *Wederstrandt* where Louisiana courts either explicitly or implicitly suggested that successors can bring an action to annul a decedent's marriage following the decedent's death.³⁵⁹ Taken together with *LaRocca*, *Cannatella*, and *Buhler*, the expansion of successors' rights in *Ricks* and *Wederstrandt* suggest that Louisiana courts may allow successors to continue litigating a decedent's divorce or nullity action.³⁶⁰ However, the Louisiana Supreme Court's holding in *McCann* makes it unclear to what extent Louisiana courts will allow successors to continue litigating a decedent's divorce action.³⁶¹ Further, the nullity cases raise the question of whether any court should allow someone to institute a divorce action for the first time after death.³⁶²

III. COMPARATIVE ANALYSIS—DIVORCE AFTER DEATH ACROSS THE UNITED STATES

The path taken by the Louisiana Supreme Court in *LaRocca* demonstrates one of two major approaches taken by states to address the

355. See *id.* See *Wederstrandt v. Kol*, 353 So. 3d 833, 834–37 (La. App. 1st Cir. 2022), *cert. granted*, 352 So. 3d 966 (La. 2023).

356. See *Wederstrandt*, 366 So. 3d at 60–63; *Wederstrandt*, 353 So. 3d at 834–37.

357. *Arceneaux v. Arceneaux*, 94 So. 2d 449, 450 (La. 1957).

358. See *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. App. 5th Cir. 2012); *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. App. 1st Cir. 2018); *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

359. *In re Succession of Ricks*, 893 So. 2d 98, 100 (La. Ct. App. 1st Cir. 2004); *Wederstrandt*, 353 So. 3d at 836–37.

360. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *Ricks*, 893 So. 2d at 100; *Wederstrandt*, 353 So. 3d at 834–37.

361. See *McCann*, 93 So. 3d at 550.

362. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *Ricks*, 893 So. 2d at 100; *Wederstrandt*, 353 So. 3d at 834–37.

heritability of divorce actions.³⁶³ The majority approach holds that a divorce action terminates upon the death of one of the spouses.³⁶⁴ The minority approach allows for continued litigation under certain circumstances.³⁶⁵ Today, Louisiana follows the minority approach because Louisiana courts have, under certain circumstances, allowed successors to continue litigating a decedent-spouse's divorce action.³⁶⁶

According to the majority view, when one of the spouses dies prior to the finalization of a divorce proceeding, a court's prior jurisdiction over the action is lost and all pending litigation must cease.³⁶⁷ The court also loses jurisdiction over any claims incidental to the divorce, such as any property rights, because those claims are predicated on the divorce action itself.³⁶⁸ Thirty-seven states follow this approach.³⁶⁹ Further, within the majority view, seven states also allow for a limited exception to the general rule of abatement, and provide that courts retain jurisdiction over the related property rights when a final judgment has been entered prior to the death of one of the spouses.³⁷⁰ However, in those states, the court loses jurisdiction over the divorce itself because the marital relationship has already terminated by death.³⁷¹

Like the majority view, the minority approach accepts that death terminates a marriage.³⁷² When one spouse dies, and the marriage is terminated, the petition for divorce becomes moot because the marriage

363. See *LaRocca*, 597 So. 2d at 1007; Anthony Bologna, *The Impact of the Death of a Party to a Dissolution Proceeding on a Court's Jurisdiction Over Property Rights*, 16 J. AM. ACAD. MATRIM. L. 507, 507 (2000).

364. Bologna, *supra* note 363, at 507.

365. *Id.*

366. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; Bologna, *supra* note 363, at 507.

367. Bologna, *supra* note 363, at 507.

368. *Id.*

369. The states following the majority approach include Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. *Id.* at 507–22.

370. The states providing an exception to the general rule of abatement under the majority rule include Alabama, Florida, Minnesota, Mississippi, Missouri, Nevada, and Ohio. *Id.* at 508.

371. *Id.* at 507–08.

372. *Id.* at 507.

has terminated by other means.³⁷³ However, the minority approach takes the unique view that any incidental claims, like property rights, survive the death of one of the spouses.³⁷⁴ Fully litigating the property issues intertwined with the divorce then affects the property rights of the surviving spouse and the decedent-spouse's successors.³⁷⁵ Eleven states, including Louisiana, follow this approach.³⁷⁶ The minority view attempts to make relief for both parties in a divorce proceeding equitable.³⁷⁷ Under the minority view, a pending divorce suit will not abate upon the death of one of the parties; therefore, distribution of the marital estate continues through the divorce proceeding, even after the death of one of the parties.³⁷⁸

However, clear guidelines are still lacking under the minority approach.³⁷⁹ Courts in some states, including Alaska, Connecticut, and Wyoming, have read legislation to implicitly allow divorce actions to continue after a decedent-spouse's death because the legislation itself fails to explicitly allow or disallow this type of litigation.³⁸⁰ States have generally failed to create targeted legislation directly answering whether divorce litigation can be continued following the death of a decedent-spouse.³⁸¹

Ultimately, whether a state follows the majority or minority approach, depends on the whim of the courts of that state.³⁸² Louisiana, for example, originally followed the majority approach demonstrated in *Arceneaux* which held that a divorce action abates upon the death of one of the parties.³⁸³ The Louisiana Supreme Court's more recent decision in *LaRocca*, however, follows the minority approach because it allowed a successor to continue the decedent-spouse's divorce litigation following the decedent-spouse's death because of the property rights involved.³⁸⁴ Louisiana courts continue to apply *LaRocca*, although their applications

373. *Id.* at 522.

374. *Id.*

375. *Id.*

376. The states following the minority approach include Alaska, California, Connecticut, Idaho, Kentucky, Michigan, New Jersey, North Carolina, South Carolina, West Virginia, and Wyoming. *Id.* at 522–26.

377. *Id.* at 522.

378. *Id.*

379. *See id.* at 507–26.

380. *Id.* at 523–24, 526.

381. *See id.* at 507–26.

382. *See id.*

383. *Arceneaux v. Arceneaux*, 94 So. 2d 449, 450 (La. 1957).

384. *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992).

have been inconsistent because the decisions fail to create clear guidelines to determine when a successor can continue litigating a decedent-spouse's divorce action.³⁸⁵ The shift from *Arceneaux's* historical approach to the current application of *LaRocca* demonstrates a shift from the majority approach to the minority approach.³⁸⁶ A shift from either the majority to minority approach or vice versa can happen just as easily over time in other states when there are no clear guidelines established, whether from a court or a legislature.³⁸⁷ The lack of clear judicial or legislative guidelines in Louisiana and across the United States leaves successors without a delineated path to determine whether they can or cannot continue litigating a decedent-spouse's divorce after death.³⁸⁸ Clearer legislative guidelines are even more important in Louisiana where jurisprudence, unlike legislation, is not a source of law, thus leaving the potential for divorce litigation after a decedent-spouse's death subject to more volatility.³⁸⁹

IV. LOUISIANA'S INCONSISTENT APPROACH TO DIVORCE AFTER DEATH

Current Louisiana law does not clearly answer whether and under what circumstances an action for divorce abates upon the death of one of the spouses.³⁹⁰ Further, the law exists in confusion with respect to whether a successor can continue to litigate a decedent's divorce when the decedent dies between the filing of the divorce petition and the final judgment of divorce.³⁹¹ Legislatively, the law provides no definitive answer but only defines strictly personal obligations.³⁹² Jurisprudentially, the Louisiana Supreme Court established that actions for divorce fall under the category of strictly personal obligations, suggesting that an action for divorce may

385. See *LaRocca*, 597 So. 2d at 1007; *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

386. See *Bologna*, *supra* note 363, at 507; *Arceneaux*, 94 So. 2d at 450; *LaRocca*, 597 So. 2d at 1007.

387. See *Bologna*, *supra* note 363, at 522; *Arceneaux*, 94 So. 2d at 450; *LaRocca*, 597 So. 2d at 1007.

388. See *Bologna*, *supra* note 363, at 522; *Arceneaux*, 94 So. 2d at 450; *LaRocca*, 597 So. 2d at 1007.

389. LA. CIV. CODE art. 1 (2023).

390. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

391. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

392. LA. CIV. CODE art. 1766.

only be brought and continued by one of the spouses.³⁹³ However, as soon as the court established this general rule, it made an exception for the facts of *LaRocca*.³⁹⁴ Even with this guidance from the court, *LaRocca* and subsequent cases fail to establish clear guidelines and do not delineate the circumstances under which a successor can continue litigation of a decedent's divorce action.³⁹⁵ This ambiguity extends both to the requisite procedural status of the case at the time of the decedent's death and to the requisite property rights.³⁹⁶ Whether a successor can continue to litigate a decedent's divorce action affects the inheritance rights of both the successors and the surviving spouse.³⁹⁷ Thus, successors' inheritance rights are left uncertain because it is unclear when a successor can continue to litigate the divorce.³⁹⁸

A. Jurisprudential Requirements to Continue Litigation of a Decedent-Spouse's Divorce

In the cases of *LaRocca*, *Cannatella*, and *Buhler*, Louisiana courts have allowed successors to continue litigating a decedent-spouse's divorce.³⁹⁹ However, these cases fail to establish clear guidelines and leave the future of successors' ability to continue a decedent-spouse's divorce unclear.⁴⁰⁰ *LaRocca*, *Cannatella*, and *Buhler* do not establish clear requirements in terms of what procedural stage the litigation must be in at the time of the decedent-spouse's death and what property rights are sufficient.⁴⁰¹

First, jurisprudence allows a successor to continue a decedent's divorce action at different procedural points in the litigation, but it remains

393. *LaRocca*, 597 So. 2d at 1007.

394. *Id.*

395. *See id.* *See Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

396. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

397. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

398. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann*, 93 So. 3d at 550.

399. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

400. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

401. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

unclear where courts draw the line.⁴⁰² In *LaRocca v. LaRocca*, Isabelle LaRocca died after the judgment of divorce and the filing of her appeal but before the appellate court finalized the judgment.⁴⁰³ In *Cannatella v. Cannatella*, a motion for new trial was filed but Anthony Cannatella died before the new trial could occur.⁴⁰⁴ In *In re Succession of Buhler*, Mark Buhler died after the court signed and rendered a divorce judgment but “before the delay for . . . appeal had expired.”⁴⁰⁵ These cases are consistent insofar as they allow successors to continue litigating decedents’ divorces but inconsistent as to the timing of the privilege.⁴⁰⁶ Currently, neither the Louisiana courts nor the Louisiana legislature have addressed whether the holdings in *LaRocca*, *Cannatella*, and *Buhler*, which permit a decedent’s successor to continue a divorce after the decedent’s death, are limited to cases where a divorce judgment has already been rendered.⁴⁰⁷

Second, jurisprudence requires the existence of property rights related to the divorce action for a successor to continue litigating the decedent’s divorce.⁴⁰⁸ However, what property rights the courts will find sufficient is also unclear.⁴⁰⁹ *LaRocca*, *Cannatella*, and *Buhler* suggest that a divorce action may only continue by a decedent’s successor when there are “substantial property rights” involved that are inextricable from the divorce action.⁴¹⁰ *LaRocca* provided a more narrow definition of “inextricable property rights,” including only those ancillary property claims originally pled in the divorce action itself.⁴¹¹ *Cannatella* demonstrated that community property rights at issue were sufficient to continue litigation.⁴¹² *Buhler* extended that definition to “substantial property rights,” including revocations of testamentary provisions.⁴¹³

402. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

403. *LaRocca*, 597 So. 2d at 1007.

404. *Cannatella*, 91 So. 3d at 394.

405. *Buhler*, 243 So. 3d at 42.

406. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

407. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

408. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

409. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

410. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

411. *LaRocca*, 597 So. 2d at 1007.

412. See *Cannatella*, 91 So. 3d at 394–96.

413. *Buhler*, 243 So. 3d at 47.

Particularly, the court in *Buhler* found that the divorce action did not abate upon Mark Buhler's death because the validity of Mark Buhler's testamentary dispositions depended on the determined validity of the prior judgment of divorce.⁴¹⁴ Under *Buhler*'s definition, most divorce proceedings involve property rights that allow a decedent's successor to continue that action.⁴¹⁵ This is further emphasized in Louisiana because the community property regime creates property implications in divorce actions.⁴¹⁶ Moreover, *Buhler* suggests that any inheritance rights, including intestacy, are sufficient property interests to justify continued divorce proceedings.⁴¹⁷ However, current jurisprudence has not clearly defined substantial property rights other than specific examples delineated in *LaRocca*, *Cannatella*, and *Buhler*.⁴¹⁸

The approach outlined above impacts the rights of married couples in the middle of divorce proceedings when one spouse dies before the divorce proceedings have been finalized.⁴¹⁹ When the decedent dies testate, the decedent's successors can continue litigating the divorce because *Buhler* held that the potential for the revocation of provisions in a will was sufficient to avoid abatement.⁴²⁰ If the decedent dies intestate, some other property rights must be at issue for the decedent's successor to continue litigating the divorce because without a will, there is no potential for the revocation of provisions in a will.⁴²¹ If community property is present, the surviving spouse will receive a right to either full ownership or a usufruct over the community property, subject to the naked ownership of the decedent-spouse's successors.⁴²² In contrast, termination of the community property regime by divorce would not provide for the decedent's former spouse upon the decedent's death, and the decedent's successors would have full ownership of the decedent's estate.⁴²³ When

414. *Id.*

415. *Id.*

416. Allena McCain, *Can Kids Really Cause Parents' Divorce? In Louisiana, Maybe So!*, LA. L. REV. (Sept. 28, 2018), <https://lawreview.law.lsu.edu/2018/09/28/can-kids-really-cause-parents-divorce-in-louisiana-maybe-so/> [https://perma.cc/PT22-59JS].

417. *See Buhler*, 243 So. 3d at 49.

418. *See id.* *See also* *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *Cannatella*, 91 So. 3d at 394–96.

419. *See LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

420. *See Buhler*, 243 So. 3d at 49.

421. *See* LA. CIV. CODE art. 1608(5) (2023).

422. *Id.* arts. 880, 888–90.

423. *See id.* arts. 880, 888–90, 1608(5).

the community is terminated at death, issues related to the termination of the community may also require litigation.⁴²⁴ The surviving spouse will be the successor of the decedent-spouse's separate property if the decedent-spouse has no living children, siblings, or parents.⁴²⁵ With regard to procedural timing, *Buhler* provides that the decedent's successors may continue litigating when the decedent dies following a judgment but before the delays for taking an appeal have run.⁴²⁶

Buhler's reasoning may extend to any divorce action being pursued by a decedent-spouse at the time of his or her death since most couples will have property rights that require adjudication.⁴²⁷ Thus, *Buhler's* holding could extend to any time during the divorce litigation. The holding could extend even further in an attempt to find a broader range of property rights sufficient to allow a successor to continue a divorce action.

B. Issues Arising from Unclear Judicial Guidelines

The extent to which Louisiana courts will extend *LaRocca's* exception raises issues because property distribution differs upon a decedent's death depending on whether the decedent is married or divorced at the time of his or her death.⁴²⁸ The decedent's spouse is favored in terms of inheritance rights.⁴²⁹ However, once divorced, the law does not continue to provide the same rights to the former spouse upon the decedent's death.⁴³⁰ Upon the death of one spouse, the law provides no distinction between a married couple and a married couple who have initiated but not finalized divorce proceedings.⁴³¹ Since jurisprudence has failed to establish clear guidelines, issues arise including inconsistencies in the presumed intent of the parties and the potential for litigation delays to determine the property rights of the parties. Further, for issues similar to divorce like absolute and relative nullities, Louisiana courts allow successors to bring actions for nullity, suggesting a similar result may be appropriate for divorce. However, while annulling a marriage is similar to divorce, successors' rights in these two areas are inconsistent which generates further confusion for both successors and surviving spouses.

424. See discussion *supra* Part I.A.

425. LA. CIV. CODE art. 880.

426. See *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018).

427. McCain, *supra* note 416.

428. See LA. CIV. CODE arts. 880, 888–90, 1608(5).

429. See *id.* arts. 880, 888–90, 1608(5).

430. See *id.* arts. 880, 888–90, 1608(5).

431. See *id.* arts. 880, 888–90, 1608(5).

1. *Inconsistencies in the Presumed Intent of the Parties*

First, parties are free to memorialize their intentions for the distribution of their property upon their death through a will.⁴³² Assuming that a will is valid, it will be enforced and a decedent's property will be distributed in accordance with the provisions of the will.⁴³³ However, the decedent's intent may change under certain circumstances.⁴³⁴ For example, Louisiana Civil Code article 1608(5) provides for the revocation of legacies, testamentary designations, and appointments when the testator and the legatee divorce between the execution of the testament and the time of the testator's death.⁴³⁵ Following a divorce, it is more likely than not that a spouse no longer intends to leave property to his or her former spouse.⁴³⁶ However, if parties intend to leave property to one another and maintain testamentary designations and appointments, Louisiana Civil Code article 1608(5) allows spouses the opportunity to provide intent contrary to the general rule of revocation.⁴³⁷ Thus, regardless of the decedent's wishes to continue leaving property to their former spouse, Louisiana Civil Code article 1608(5) protects the decedent's intent in the case of divorce.⁴³⁸

Similarly, intestacy law protects the presumed intent of the decedent.⁴³⁹ Under the Presumed Will Theory, intestacy law is modeled to distribute a decedent's property upon their death in a manner likely to be consistent with the decedent's intent.⁴⁴⁰ Most married individuals with wills leave their estates to their spouses.⁴⁴¹ Intestacy law considers this intent and provides for one spouse upon the death of the other spouse.⁴⁴² When couples are no longer married, the law does not provide for a former spouse from a decedent's estate, which aligns with the decedent's presumed intent.⁴⁴³ Further, under the Natural Duty Theory, property is left to a surviving spouse partly due to a societal expectation that the

432. *Id.* art 1469.

433. *See id.*

434. *See id.* art. 1608(5).

435. *Id.*

436. LA. CIV. CODE ANN. art. 1608(5) cmt. f (2023).

437. LA. CIV. CODE art. 1608(5).

438. *See id.*

439. Dampf, *supra* note 56, at 906.

440. *Id.*

441. *Id.*

442. LA. CIV. CODE arts. 880, 888–90.

443. *Id.* arts. 880, 888–90.

decendent-spouse had a duty to support their spouse.⁴⁴⁴ However, upon divorce, that duty to support ceases.⁴⁴⁵

When one spouse dies during his or her divorce proceedings, there exists a gap between how the decedent likely intended to distribute his or her property and what the law provides for.⁴⁴⁶ When the decedent dies intestate or leaves property to his or her spouse through a valid will, death before a finalized divorce means that the surviving spouse receives property as if the intent of the decedent did not change.⁴⁴⁷ While the law presumes the intent of divorced spouses, the law does not apply the same logic to a couple in the middle of divorce proceedings.⁴⁴⁸ However, empirical evidence shows that divorcing couples tend to prefer leaving “nothing or less than half of their estates” to the other.⁴⁴⁹ In this situation, property tends to be distributed in a manner wholly inconsistent with the decedent’s presumed intent. Thus, the same justification for presuming the intent of divorced spouses should extend to spouses in the middle of divorce proceedings.⁴⁵⁰

2. *Potential for Litigation Delays to Determine the Property Rights of the Parties*

Next, under the current state of the law, the normal delays of litigation can ultimately determine the property rights of the parties.⁴⁵¹ In Louisiana, several grounds for divorce entitle parties to an immediate divorce, provided that certain requirements are met.⁴⁵² However, even an “immediate” divorce is still subject to the general delays of litigation.⁴⁵³ An issue arises when one spouse dies while the couple awaits action from the court. In that scenario, there was no divorce judgment at the time of the decedent’s death due only to the delays that arise when awaiting court

444. Dampf, *supra* note 56, at 904–05.

445. *See id.*

446. *See* LA. CIV. CODE ANN. art. 1608 cmt. f (2023).

447. *See* LA. CIV. CODE art. 1608(5).

448. *See id.*

449. Adam J. Hirsch, *Inheritance on the Fringes of Marriage*, 2018 U. ILL. L. REV. 101, 126 (“All told, divorcing spouses who wished to leave the other spouse nothing or less than half of their estates outnumbered those who wished to leave the other all or half by 59.2% to 40.8%.”).

450. *See id.*

451. *See, e.g.*, LA. CODE CIV. PROC. art. 1001 (2023).

452. *See* LA. CIV. CODE arts. 102–03. These include the fault-based grounds for divorce in traditional marriage and an article 103(1) no-fault ground for divorce in traditional marriage.

453. *See, e.g.*, LA. CODE CIV. PROC. art. 1001.

action. A combination of the decedent's untimely death and the delays of litigation arbitrarily determines the marital status of the parties at the time of the decedent's death. Thus, the property rights of the parties are also affected.

3. *Louisiana Jurisprudence Allows Successors to Continue Litigating Similar Issues for a Decedent*

Last, as demonstrated in *Ricks* and *Wederstrandt*, Louisiana courts allow successors to continue the litigation of similar issues which are generally considered personal, such as the ability of a successor to demand nullity of a decedent's marriage.⁴⁵⁴ The right to demand nullity was historically considered strictly personal and could only be brought by one of the parties to the marriage.⁴⁵⁵ Louisiana courts, however, have expanded successors' rights to allow successors to bring an action for nullity on behalf of a decedent.⁴⁵⁶ Even though the annulment of a marriage and a divorce are similar in that they both end a marriage, *Ricks* and *Wederstrandt* seem to provide successors with more substantial rights to annul a decedent's marriage than what is jurisprudentially provided for in cases of divorce.⁴⁵⁷ *Ricks* and *Wederstrandt* suggest that successors may be able to bring an action to annul the decedent's marriage while *LaRocca*, *Cannatella*, and *Buhler* only contemplate the rights of successors to continue a decedent's pending divorce litigation.⁴⁵⁸ The inharmonious holdings established by courts for both nullity and divorce demonstrate a need for greater clarity.⁴⁵⁹ Thus, Louisiana's legislature should help clarify this current ambiguity in Louisiana law by allowing successors to continue litigating a decedent's divorce in order to protect the decedent's intent.

454. *In re Succession of Ricks*, 893 So. 2d 98, 100 (La. Ct. App. 1st Cir. 2004); *Wederstrandt v. Kol*, 353 So. 3d 833, 834–37 (La. Ct. App. 1st Cir. 2022), *cert. granted*, 352 So. 3d 966 (La. 2023).

455. *Ricks*, 893 So. 2d at 100.

456. *Id.* See *Wederstrandt*, 353 So. 3d at 834–37.

457. See *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012); *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Ricks*, 893 So. 2d at 100; *Wederstrandt*, 353 So. 3d at 834–37.

458. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *Ricks*, 893 So. 2d at 100; *Wederstrandt*, 353 So. 3d at 834–37.

459. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *Ricks*, 893 So. 2d at 100; *Wederstrandt*, 353 So. 3d at 834–37.

V. CLARIFYING SUCCESSORS' RIGHTS TO CONTINUE A DECEDENT-SPOUSE'S DIVORCE LITIGATION

The current state of Louisiana law is unclear regarding whether a successor can continue a decedent-spouse's divorce action, leading to confusion and inequitable results. To provide clearer guidelines, new legislation should be enacted to clearly indicate that a decedent-spouse's successors can continue litigating a decedent-spouse's divorce, but only in certain circumstances and subject to certain limitations. In the interim of any legislative guidelines, Louisiana courts should apply previous cases like *LaRocca*, *Cannatella*, and *Buhler* more broadly to cover a wider range of circumstances.

A. Legislative Solution

As a legislative solution, a new Louisiana Civil Code article should be enacted to clearly state that a decedent-spouse's successors should be able to, with certain limitations, continue the decedent-spouse's pending divorce action. Further, certain procedural revisions should be made to the Louisiana Civil Code and Louisiana Code of Civil Procedure to provide an appropriate framework for the continued litigation. Providing clarification to the rights of a decedent-spouse's successor to continue the decedent-spouse's divorce litigation will better protect the decedent-spouse's presumed intent. Additionally, such an approach allows a divorce action to continue when the outcome of the litigation will have an effect on the distribution of the decedent-spouse's property.

1. Proposed Prerequisites Successors Must Meet to Continue the Decedent-Spouse's Divorce Litigation

New legislation should establish certain requirements that a decedent-spouse's successor must meet before continuing the litigation of the decedent-spouse's divorce. First, the petition should be filed prior to the decedent-spouse's death. Second, successors should only be able to continue litigating the decedent-spouse's divorce when there are any property rights that will be affected depending on the resolution of the divorce. Finally, legislation should also state that a subsequent divorce judgment will be retroactive to the date of the decedent-spouse's death, meaning that the marriage will terminate by divorce rather than death.

a. *The Divorce Petition was Filed Prior to the Decedent-Spouse's Death*

First, a spouse must file a divorce petition—before the decedent-spouse's death—for a successor to substitute the decedent-spouse in the divorce action. The petition for divorce evidences that the parties intended to be divorced. When spouses intend to be divorced, it follows that the spouses likely intend to have their property distributed differently upon their deaths. The law recognizes this presumed change in intent following a divorce.⁴⁶⁰ To reflect the intentions of the majority of people, the law should also recognize this change in intent following the divorce petition's filing and allow a decedent-spouse's successor to continue litigating the decedent-spouse's divorce action once a petition has been filed. However, there is potential for the spouses' subjective intentions to differ from those presumed by law. In this case, while a surviving spouse may have never desired a divorce, the surviving spouse may have the opportunity to dismiss the case. However, if the surviving spouse is a defendant, the case will not be dismissed without the consent of the plaintiff-successors, as is the general rule in divorce litigation.

Further, there is some concern that successors will pursue the decedent-spouse's divorce action purely for personal gain. However, the requirement of a filed divorce petition prior to the decedent-spouse's death limits the ability of successors to continue only those divorce proceedings that began during the lifetime of both spouses. The resolution of the litigation also allows for property distribution between successors and the surviving spouse in the same manner that the property would have been distributed between the spouses had the divorce been finalized prior to one of their deaths. It is inequitable to change this distribution and ignore the intent of the decedent solely because of the decedent's untimely death. This requirement also prevents an influx of excessive litigation because only active divorce actions will be litigated following the death of one of the spouses.

For a no-fault divorce under article 103(1) or any other fault-based ground for divorce under article 103, spouses are entitled to an immediate divorce upon the filing of a divorce petition.⁴⁶¹ When no petition has been filed prior to the decedent-spouse's death, the parties have not adequately manifested an intention to divorce. While the decedent and surviving spouse may have intended on getting divorced, wished to file for a no-fault divorce under article 103(1), and fulfilled the requisite period for living

460. See LA. CIV. CODE ANN. art. 1608 cmt. f (2023).

461. Wallace, *supra* note 2, at 633.

separate and apart, the intent of the parties continues to be unclear if the petition for divorce has not been filed. Allowing successors to begin a decedent-spouse's divorce action following the decedent's death speculatively assumes the intent of the decedent without the manifestation of the decedent's intent through a petition for divorce. Thus, litigation of article 103 divorce actions should only continue if a petition is filed prior to the decedent-spouse's death.

b. Intertwined Property Interests are at Stake in and Depend on the Outcome of the Divorce

Next, a divorce action should not continue in the absence of property interests that depend on the outcome of the divorce. The issue in continuing divorce litigation following the death of one of the spouses is not the dissolution of the marriage itself. Death terminates the marital contract, so litigation should not continue for the purpose of dissolution since the death of one of the parties achieves that purpose. Rather, a divorce should only continue following the death of one of the spouses when fully litigating the divorce action will distribute the decedent-spouse's property in a manner consistent with the decedent-spouse's presumed intent. Instead of being a mere formality, the outcome of continuing the litigation should have some effect on the property rights of the decedent-spouse's successors and the surviving spouse. Realistically, almost all divorce actions will have some type of patrimonial property rights at stake, and Louisiana jurisprudence has recognized that successors can continue divorce litigation to appropriately distribute those property rights.⁴⁶² Therefore, Louisiana courts should allow litigation to continue provided that the successors demonstrate some property rights that depend on the resolution of the divorce.

c. Proposed Legislation

Finally, taking into account these considerations, a new Louisiana Civil Code article should be enacted. Upon enactment, the article should include the following language:

A decedent's successor may continue litigating the decedent's divorce action following the decedent's death when: (1) a petition for divorce has been filed before the decedent's death; and (2)

462. See *LaRocca*, 597 So. 2d at 1007; *Cannatella*, 91 So. 3d at 394–96; *Buhler*, 243 So. 3d at 49; *Ricks*, 893 So. 2d at 100; *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

there are ancillary property interests that are intertwined with and at stake in the divorce action that depend on the outcome of the divorce. A subsequent divorce judgment shall be deemed retroactive to the date of the decedent-spouse's death so that the marital relationship and community property regime are terminated by divorce, rather than the decedent's death.

This legislation provides clarification to the rights of a decedent's successor to continue the decedent's divorce litigation. Continued litigation will better protect the decedent's presumed intent and distribute the decedent's property consistent with that intent.

2. *Proposed Procedural Framework*

Should successors meet the proposed prerequisites for continuing the litigation of a decedent-spouse's divorce, a procedural framework must be established to dictate how such litigation will proceed. Louisiana Civil Code article 103.1 and Louisiana Code of Civil Procedure articles 3954, 3958, and 3942 should be amended to establish this framework. As a general rule, successors continuing a decedent-spouse's divorce litigation should be subject to the same requirements and burdens of proof, particularly with regard to the requisite periods for living separate and apart for no-fault divorces under articles 102 and article 103(1). Further, the existing procedural rules for abandonment, dismissal, and appeals should be applied and extended to address time constraints and other issues that will likely arise as a result of continuing divorce litigation after a decedent-spouse's death.

a. Requirements and Burdens of Proof

First, successors should be subject to the same requirements and burden of proof as the decedent-spouse. This requirement ensures that the divorce petition is not frivolous and has merit. Louisiana law places restrictions on the availability of divorce, evidenced by the requirements to obtain a divorce, such as mandatory waiting periods of living separate and apart for divorce actions under articles 102 and 103(1).⁴⁶³ To avoid violation of those policies, a court should only grant a divorce when the requirements for divorce are met prior to the death of one of the spouses. Thus, Louisiana Civil Code article 103.1 should be amended to add: "The requisite periods of time must be fulfilled prior to either spouse's death."

463. See, e.g., LA. CIV. CODE art. 103.1 (2023).

While the potential for reconciliation may be a concern, fulfilling the requirements prior to death demonstrates that the parties did not reconcile during the waiting period prescribed by law. If the parties met the requirements for living separate and apart, then the parties had the chance to reconcile. If reconciliation did not occur, it is inequitable to distribute property differently based on the speculative possibility that the parties could have reconciled because most couples do not reconcile after initiating divorce proceedings. Additionally, when the decedent files for divorce on a fault-based ground, the successors should bear the same burdens of proof that apply to prove adultery, abuse, or felony status. Further, either the successor or the surviving spouse may present evidence of reconciliation. The court can then determine whether the parties reconciled prior to the decedent's death. If the parties reconciled, then the petition for divorce should be dismissed so that the marriage terminates by death, not divorce.

b. Abandonment

Second, abandonment rules should continue to apply to limit the time that a divorce action can be litigated, therefore, preventing successors' attempts to litigate the divorce years down the road. A divorce filed under Louisiana Civil Code article 102 is deemed abandoned if the rule to show cause has not been filed within two years of the service of the petition or written waiver of service.⁴⁶⁴ For divorces under Louisiana Civil Code article 103, the general three-year abandonment rule applies.⁴⁶⁵ However, an extension to the general abandonment terms should be added to lessen time constraints on successors so that they have at least one year from the decedent-spouse's death to continue litigating the divorce. Thus, Louisiana Code of Civil Procedure article 3954 should be amended to include that:

Any divorce action instituted while both spouses are living and continued following the death of one of the spouses by the decedent-spouse's successor will not be considered abandoned until one year has passed from the decedent-spouse's death or the time periods included in this article or in article 561 have expired, whichever occurs later.

464. LA. CODE CIV. PROC. art. 3954 (2023).

465. *Id.* art. 561.

Accordingly, when successors are plaintiffs, they will be guaranteed at least one year to continue the litigation, regardless of how much time of the general abandonment terms have passed.

c. Dismissal

Third, the rule for dismissal of article 102 divorces should be extended to article 103(1) no-fault divorces. For dismissal, a plaintiff may generally dismiss a suit if he or she no longer wishes to sue.⁴⁶⁶ In the context of divorce, particularly for no-fault divorces under Louisiana Civil Code article 102, a divorce petition may only be dismissed upon joint application of both parties or following a contradictory motion by the plaintiff.⁴⁶⁷ Courts should continue to apply this rule in article 102 divorce actions; however, it should also extend to no-fault divorce actions under article 103(1). Thus, Louisiana Code of Civil Procedure article 3958 should be amended to provide: “When a decedent-spouse dies pending their divorce filed pursuant to Civil Code Articles 102 or 103(1), a judgment dismissing a petition for divorce shall be rendered upon joint application of the surviving spouse and decedent-spouse’s successors and upon payment of all costs, or upon contradictory motion of the plaintiff.”

Even when the surviving spouse is the plaintiff, it is inequitable to allow the surviving spouse to dismiss the suit because dismissal will prevent proper adjudication of the divorce and related property rights. In the case of a no-fault divorce, whether the surviving spouse is the plaintiff or defendant depends more on who sued first rather than who was at fault. Further, if the plaintiff dismisses the case, the defendant’s death prevents the defendant from later filing for divorce from the plaintiff. Thus, it is inequitable to allow the plaintiff to dismiss the suit because the plaintiff would likely gain property rights. Should the surviving spouse and successor agree, the parties may file a joint application and have the suit dismissed, meaning that the marriage would be terminated by death and not divorce. However, the court may dismiss the suit following a contradictory motion by the plaintiff if the parties cannot reach an agreement.

466. *Id.* art. 1671.

467. *Id.* art. 3958. The community property regime will terminate retroactive to the date of the divorce petition’s filing once a judgment of divorce is granted. If the suit is dismissed, a new petition must be filed for the couple to obtain a divorce. Once a judgment of divorce is granted, the community property regime will be terminated retroactive to the date of the new petition’s filing. If plaintiffs could freely dismiss suits for divorce, the community property regime could be extended indefinitely. *See id.*

In contrast, when the decedent files for divorce from the surviving spouse on a fault-based ground, only the successor decides whether to dismiss the case because the successor is now the plaintiff. When the surviving spouse files for divorce from the decedent on a fault-based ground, that surviving spouse maintains the decision to dismiss the suit for divorce. This forces the plaintiff to continue litigating against their best interests which may dissuade plaintiffs from filing suit.

d. Appeal

Fourth, should one spouse die following a judgment of divorce but before the appeals delay has run, the appeals delay should be extended to one year from the date of the decedent-spouse's death. This extension provides the successors and the surviving spouse adequate time to continue litigation. Louisiana Code of Civil Procedure article 3942 should be amended to include: "Should one spouse die before the appeals delay has run, an appeal from a judgment granting a divorce can be taken within one year from the date of the decedent-spouse's death." This extension, like the extension of the abandonment period, provides successors with the opportunity to continue divorce litigation without being limited by the short periods of time allotted for an appeal.

Upon application of this proposal, Louisiana law will be consistent with *LaRocca*, *Cannatella*, and *Buhler* which allow successors to continue litigating a decedent's divorce action when substantial property rights are at stake.⁴⁶⁸ Although some Louisiana courts have adopted the reasoning behind this approach, it is not consistently applied to all cases throughout Louisiana.⁴⁶⁹ This legislation will ensure uniform application of the law and better protection of the decedent's intent. Additionally, application of this amendment will confirm Louisiana's alignment with the minority approach and ensure clearer guidelines and a proper framework for successors to continue litigating these cases.⁴⁷⁰

B. Interim Judicial Solution

In the absence of legislative guidelines, courts should broadly apply the holdings in *LaRocca*, *Cannatella*, and *Buhler* to allow successors to

468. See *LaRocca v. LaRocca*, 597 So. 2d 1000, 1007 (La. 1992); *In re Succession of Buhler*, 243 So. 3d 39, 49 (La. Ct. App. 1st Cir. 2018); *Cannatella v. Cannatella*, 91 So. 3d 393, 394–96 (La. Ct. App. 5th Cir. 2012).

469. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96; *McCann v. McCann*, 93 So. 3d 544, 550 (La. 2012).

470. See *Bologna*, *supra* note 363, at 507.

continue a decedent's divorce action: (1) in the presence of property rights inextricable from the divorce action; and (2) at any point in the litigation after the litigation begins. Louisiana courts, in *LaRocca*, *Cannatella*, and *Buhler*, demonstrated a willingness to allow complete adjudication of divorce actions following the death of one of the spouses and in the presence of certain property rights.⁴⁷¹ Louisiana courts allow succession representatives to bring similar actions, like an action to annul a marriage following the death of one of the spouses.⁴⁷² Thus, by analogy, the courts should allow this type of litigation which facilitates the distribution of the decedent's property in accordance with the presumed intent of the decedent, and in the same manner that the property would have been distributed had the divorce been finalized during the decedent's lifetime.

While *LaRocca*, *Cannatella*, and *Buhler* all involved divorce judgments already rendered at the time of the decedent-spouse's death, courts should further extend the rationale in *LaRocca*, *Cannatella*, and *Buhler* to similar situations where a party has filed for divorce, but no judgment has been rendered. Courts should also extend the holdings of *LaRocca*, *Cannatella*, and *Buhler* to all divorces where property issues are at stake and depend on the resolution of the divorce litigation. While an interim jurisprudential solution may achieve these goals, this legislative solution remains preferable because it provides for a clearer set of guidelines for courts to apply and decreases any confusion surrounding inheritance rights. The suggested legislative solution makes clear that the divorce judgment is retroactive to the death of the decedent-spouse, a step courts may be unwilling to take on their own.

CONCLUSION

Upon an individual's death, the goal is to distribute property in a manner consistent with his or her intent. In many ways, including the provisions of testate and intestate successions, the law demonstrates respect to that principle.⁴⁷³ The Louisiana Civil Code provides for the distribution of a decedent's property differently depending on whether a decedent is married or divorced at the time of death because the law presumes that the parties' intent differs in the respective situations.⁴⁷⁴

471. See *LaRocca*, 597 So. 2d at 1007; *Buhler*, 243 So. 3d at 49; *Cannatella*, 91 So. 3d at 394–96.

472. See *In re Succession of Ricks*, 893 So. 2d 98, 100 (La. Ct. App. 1st Cir. 2004); *Wederstrandt v. Kol*, 353 So. 3d 833 (La. Ct. App. 1st Cir. 2022), cert. granted, 352 So. 3d 966 (La. 2023).

473. See LA. CIV. CODE arts. 880, 888–90, 1608(5) (2023).

474. See *id.* arts. 880, 888–90, 1608(5).

However, the intent of the decedent is ignored when the decedent dies in the middle of his or her divorce proceedings. This change in intention does not manifest at the moment the court issues a divorce judgment.

Legislation should be enacted to allow a successor to continue litigating a decedent's divorce action to ensure that the distribution of property following a decedent's death best matches with the decedent's intent. Since Louisiana Civil Code article 1608(5) presumes a change in intent following a divorce, the benefits that come with that presumption should also apply when a decedent dies during a divorce action.⁴⁷⁵ Intestate law recognizes the same change in intent because surviving spouses are provided for while former spouses are not.⁴⁷⁶ Certain limitations should be placed on the successor's ability to substitute the decedent in divorce proceedings. Such limitations include allowing divorce litigation to continue when a petition was filed prior to the decedent's death and when the divorce includes inextricable property rights that depend on the resolution of the divorce. Further, the same requirements and burdens of proof that applied to the decedent before death should apply to the successor continuing the litigation. The procedural rules of abandonment, dismissal, and appeal should continue to apply to these cases, with some extensions. In the absence of legislative action, Louisiana courts should broadly apply the holdings in *LaRocca* and *Buhler* to allow successors to substitute decedents when the decedent dies after the divorce litigation has begun and when substantial property rights are intertwined with the divorce action. This approach aligns Louisiana law with current jurisprudence and produces enhanced clarity and equity for divorcing spouses and their successors.

475. *Id.* art. 1608(5).

476. *See id.* arts. 880, 888-90.

APPENDIX OF PROPOSED AMENDMENTS

Louisiana Civil Code article _____. Divorce litigation following a decedent's death

A decedent's successor may continue litigating the decedent's divorce action following the decedent's death when: (1) a petition for divorce has been filed before the decedent's death; and (2) there are ancillary⁴⁷⁷ property interests that are intertwined with and at stake in the divorce action that depend on the outcome of the divorce. A subsequent divorce judgment shall be deemed retroactive to the date of the decedent-spouse's death so that the marital relationship and community property regime are terminated by divorce, rather than the decedent's death.

Louisiana Civil Code article 103.1. Judgment of divorce; time periods

The requisite periods of time, in accordance with Articles 102 and 103 shall be as follows:

(1) One hundred eighty days where there are no minor children of the marriage.

(2) Three hundred sixty-five days when there are minor children of the marriage at the time the rule to show cause is filed in accordance with Article 102 or a petition is filed in accordance with Article 103.

The requisite periods of time must be fulfilled prior to either spouse's death.

Louisiana Code of Civil Procedure article 3958. Voluntary dismissal

A judgment dismissing a petition for divorce under Civil Code Article 102 shall be rendered upon joint application of the parties and upon payment of all costs, or upon contradictory motion of the plaintiff. A judgment of dismissal rendered under this Article shall be without prejudice to any separation of property decree rendered under Civil Code Articles 2374 and 2375.

When a decedent-spouse dies pending their divorce under Civil Code Articles 102 or 103(1), a judgment dismissing a petition for divorce shall be rendered upon joint application of the surviving spouse and decedent-spouse's successors and upon payment of all costs, or upon contradictory motion of the plaintiff.

477. In addition to the provided definition, courts should use jurisprudence defining the term "ancillary" property rights as a guide.

Louisiana Code of Civil Procedure article 3942. Appeal from judgment granting or refusing annulment or divorce

A. An appeal from a judgment granting or refusing an annulment of marriage or a divorce can be taken only within thirty days from the applicable date provided in Article 2087(A). **Should one spouse die before the appeals delay has run, an appeal from a judgment granting a divorce can be taken within one year from the date of the decedent-spouse's death.**

B. Such an appeal shall suspend the execution of the judgment insofar as the judgment relates to the annulment, divorce, or any partition of community property or settlement of claims arising from the matrimonial regime.

Louisiana Code of Civil Procedure article 3954. Abandonment of action

A. A divorce action instituted under Civil Code Article 102 is abandoned if the rule to show cause provided by that Article is not filed within two years of the service of the original petition or execution of written waiver of service of the original petition. **Any divorce action instituted while both spouses are living and continued following the death of one of the spouses by the decedent-spouse's successor will not be considered abandoned until one year has passed from the decedent-spouse's death or the time periods included in this article or in article 561 have expired, whichever occurs later.**

B. This provision shall be operative without formal order, but on ex parte motion of any party or other interested person, the trial court shall enter a formal order of dismissal as of the date of abandonment.