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Doctrine of Election: Illinois Supreme Court rules after 50 years

By David Feinberg

The doctrine of election is a creature of case law that Illinois probate attorneys have been required to be cognizant of as it applies to wills. As such, legal practitioners in the probate area have kept this doctrine on their checklist of items to discuss with their clients contemplating the filing of a will contest. Attorneys in the trust area felt their heart skip a beat with the Illinois Appellate Court's affirmed ruling in the *Estate of Robert E. Boyar*[1] applying the doctrine of election to a trust amendment. But, with the most recent Illinois Supreme Court's reversal of the lower courts' rulings, many Illinois trust attorneys have taken a sigh of relief, at least for the time being.

Definition and application of the doctrine of election

The court *In re: Estate of King*[2] explained the doctrine of election as follows: Under the doctrine of election one cannot simultaneously accept benefits conferred by a will while setting up claims contrary to the terms of the document itself. Does this same doctrine of election apply to trusts or other legal documents as well?

The Illinois Supreme Court most recently reversed both the circuit court and appellate court's decision applying the doctrine of election to a severable trust amendment with its opinion filed April 4, 2013 in the *Estate of Robert E. Boyar.*[3] As the Illinois Supreme Court noted, although the doctrine's origins are ancient, it has fallen out of favor in modern times as its purposes and applications have been reevaluated and criticized.[4] To apply the equitable doctrine of election in a carte blanche fashion would result in inequitable consequences. And so as the Illinois Supreme Court concluded in the *Boyar* case, the doctrine of election is not automatically applicable when a beneficiary receives personal property under a trust. In essence, there is no bright line rule for the application of the doctrine of election in the context of trusts.

Three primary cases applying the doctrine of election to wills

In Illinois, the doctrine of election is triggered in the context of wills. The three main Illinois cases applying the doctrine of election to wills are *In re Estate of King,*[5] *Kyker v. Kyker*[6] and *In re Estate of Joffe.*[7]

In the *King* case, the legatees received partial distributions of personal property from the estate Later, a few of the legatees subsequently filed a petition to contest the validity of the will. In affirming the grant of summary judgment in favor of the executrix, the *King* court stated:

> The doctrine of elections, which is based upon equitable principles of estoppel, is designed to address the taking of inconsistent positions under the will and to preempt such activity. We believe that plaintiffs exhibited such an inconsistent position by accepting equal portions of this personal property of the estate and then filing the will contest petition.[8]

In *Kyker,* one of the legatees received a check for $500. The executor's motion to dismiss was granted and affirmed based on the doctrine of election where the petitioner received and accepted her specific monetary bequest under the will from the executor and then filed a will contest against the estate. The amount of the bequest was inconsequential.

In *Joffe,* each of the legatees received checks for the full amount of their legacies and then cashed those checks. Two of the grandchildren then filed a will contest petition. The court affirmed the lower court's dismissal of the petition, based on the doctrine of election:

> Both parties recognize the general equitable doctrine of election. Under that doctrine, one cannot simultaneously accept benefits conferred by a will while setting up claims contrary to the terms of the document itself. … The result of this rule is that once a beneficiary under a will has accepted a benefit granted by the will, he will be estopped from asserting any claim contrary to the validity of the will.[9]

Each of the *King*, *Kyker* and *Joffe* cases that have applied the doctrine of election in the context of wills has a common theme: One cannot take inconsistent positions by accepting property under the will and then contesting the validity of the very instrument that provided such property to him.

Exceptions to the application of the doctrine of election

Over time, exceptions to the application of the doctrine of the election have taken hold, namely: (1) acceptance of a bequest under a provision of the will must have been made with full knowledge of the relevant facts and circumstances, including the contents of the will and the circumstances surrounding the execution of the will; (2) even though a person accepts a benefit under the

will, he or she is not precluded from questioning the validity of any provisions that are contrary to the law or public policy."[10] Some Illinois jurisdictions recognize a third possible exception to the doctrine of election if temporary acceptance of the bequest under the will does not prejudice other parties and the offer to return the property is made prior to the filing of a will contest.[11]

Outside of these three exceptions, the lower courts seemed to trend toward a bright line approach applying the doctrine of election in all situations as it relates to a will contest. That is, if you take any property that is part of the will, you cannot then contest any portion of the will. Rather, one accepts or rejects the instrument in its entirety, and cannot pick and choose those clauses one finds most advantageous.[12]

Inequitable results: Bright line application

The bright line application of the doctrine of election may result in inequitable results, which runs counterintuitive to the purpose of this equitable doctrine. In the *Boyar* case, the petitioner and his siblings divided up sentimental personal property owned by their father's trust (unbeknownst to them that such property was owned by their father's trust), as their father had recently passed away. Later, the petitioner filed a petition contesting an amendment to the trust alleging that his father had been unduly influenced and lacked the mental capacity to create such an amendment to the trust. The amendment that petitioner was contesting only dealt with issues of the replacement of the co-trusteeship from the petitioner and a corporate trustee to a separate individual sole trustee. In addition, the amendment that the petitioner was contesting provided that the majority of the beneficiaries (petitioner and other family members) could not remove the sole trustee.

The remedy sought by petitioner to invalidate the amendment and remove the sole trustee was not inconsistent with the fact that petitioner received some of his father's nominal personal property. Invalidation of a severable amendment and removal of the trustee simply has nothing to do with the distribution of any personal property between the petitioner and his other family members; the two are completely unrelated. Seeking to invalidate an amendment to the trust regarding successor trusteeship and other administrative ancillary matters did not affect the distribution scheme in the trust.

Totality of facts and circumstances

In the *Boyar* case, the Illinois Supreme Court reversed the circuit court and appellate court's bright line application of the doctrine of election. As the Illinois Supreme Court noted:

> ….[Petitioner] was never presented with a choice between any such plurality of gifts or inconsistent or alternative rights or claims to property conferred by the trust. There was no issue of taking his property pursuant to the terms of the trust or else asserting a claim to trust property based on a right which existed independent of the trust's provisions. Without such a choice, without the existence of inconsistent claims to such property, one founded on the trust document and the other predicated on some right existing independent of the document, there was simply no election for … [petitioner] to make.[13]

The Illinois Supreme Court is clearly indicating to the lower courts that it is not going to apply the doctrine of election in the context of wills, trusts or otherwise in a bright line fashion. Rather, the Court implies in its ruling in *Boyar* that there are other factors to consider in applying a doctrine based on equity beyond the three exceptions that are in place now. That is, you must apply a doctrine based on equity fairly and look to the totality of the facts and circumstances of the individual case to decide whether the doctrine should be applied or not.

The Illinois Supreme Court applied this concept of the totality of the facts and circumstances in the *Reliable Fire Equipment Company v. Arredondo* case.[14] Although the case dealt with the application of a noncompetition restrictive covenant issue, the Court's ruling has application here in the context of wills and trusts. In the *Reliable* case, the Plaintiff (Reliable) filed a complaint against Defendants (*Arredondo*, et al.) for breach of a noncompetition restrictive covenant. The circuit court ruled and the appellate court affirmed that the covenant was unenforceable. The Illinois Supreme Court reversed the judgment.

In its opinion in *Reliable*, the Court explained that that there is a well-developed and significant body of judicial decisions relating to the enforceability of noncompetition restrictive covenants.[15] There are several factors and sub-factors that courts have looked at in deciding whether to enforce such restrictive covenants.[16] In its ruling, the Court concluded that such factors are only non-conclusive aids and that the enforceability of noncompetition restrictive covenants is based on the totality of the circumstances.[17]

Each case must be determined on its own particular facts. [Citations.] Reasonableness is gauged not just by some but by *all* of the circumstances. [Citations.] The same identical contract and restraint may be reasonable and valid under one set of circumstances, and unreasonable and invalid under another set of circumstances.[18]

Conclusion

And so while the Illinois Supreme Court has not considered the application of the doctrine of election to wills for more than 50 years,[19] and "the page is essentially blank" with the application of the doctrine to trusts, the *Boyar* and *Reliable* cases give us some insight and guidance as to the direction the Court is taking with regard to the application of the doctrine of election.

The doctrine of election is a doctrine based on equity. As such, the lower courts will be responsible for taking into consideration the specific facts and circumstances of each case on an individual basis. The facts and circumstances leading to a certain outcome in one case may be completely different in another case. A one size fits all approach will not suffice. The Illinois Supreme Court decision in *Boyar* makes it clear that the doctrine of election will not be applied automatically if a party receives property under a will, trust or otherwise. At the same time, one needs to be wary that if he accepts any property that is owned by a will, trust or otherwise, the doctrine may be applied if equity demands it. Let's be clear—today there is still no definitive ruling on whether the doctrine of election will or will not be applied in the context of trusts. But a bright line rule approach applying or not applying the doctrine of election to trusts is not where the Court is headed.

Practice tips after *Boyar* and *Reliable* cases

- There is no one size fits all approach in any case when addressing the application of the doctrine of election. Rather, you must assess all the facts and circumstances in your case, evaluate if the doctrine of elec-

tion is applicable and advise your client accordingly.

- If your client is attempting to change the distribution scheme, there is a good chance that the doctrine of election may be applicable and property should not be accepted until resolution of the dispute.
- The law is still undefined as to the application of the doctrine of election to trusts despite a trend against the bright line approach and movement towards the totality of the facts and circumstances approach. Be cautious and advise your client to not accept any property from the trust.
- If there is absolutely no relation between your cause of action (such as removing a trustee) and the receipt of personal property, you can find some comfort that the doctrine of election will not apply.
- If there is any uncertainty as to the application of the doctrine of election, as belts and suspenders you should seek court approval for the acceptance of such property and the inapplicability of the doctrine of election. ■

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1. *Estate of Robert E. Boyar v. Grant Dixon,* 2012 IL App (111013)
2. *In re Estate of King*, 245 Ill.App.3d 1088, 1092 (5th Dist. 1983)
3. *Estate of Robert E. Boyar v. Grant Dixon,* 2013 IL 113655
4. *Id.* at ¶ 28 (quoting *Estate of Williamson v. Williamson,* 275 Ill.App3d 999, 1004 (1995))
5. *In re Estate of King*, 245 Ill.App.3d 1088 (5th Dist. 1983)
6. *Kyker v. Kyker,* 117 Ill.App.3d 547 (2nd Dist. 1983)
7. *Estate of Joffe,* 143 Ill.App.3d 438 (1st Dist. 1986)
8. *King* at 1098.
9. *Joffee* at 143 Ill.App.3d at 440-41.
10. *King,* 245 Ill.App.3d at 1098-1099.
11. *King* at 1099.
12. *Joffe* at143 Ill.App.3d at 440.
13. *Boyar,* 2013 IL 113655 at ¶ 38.
14. *Reliable Fire Equipment Company v. Arredondo,* 2011 WL 6000743 (2011)
15. *Reliable at* ¶ 41.
16. *Id.*
17. *Id.* at ¶ 42.
18. *Id.* (quoting *Arthur Murray*, 105 N.E.2d at 692-693. Accord Restatement (Second) of Contracts Section 188 cmt. g.).
19. *See Remillard v. Remillard*, 6 Ill.2d 567 (1955).