2014 IL App (2d) 140239-U
No. 2-14-0239
Order filed October 7, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF JUAN MANUEL DIAZ, Deceased	)	Appeal from the Circuit Court of Lake County.
(Stephanie Diaz Rodriguez, Petitioner-Appellant, v. Maria Diaz, a/k/a Maria E. Diaz Estrada, a/k/a Maria E. Diaz Munoz, as Executor of the Estate of Juan Manuel Diaz, Deceased, Respondent-Appellee).	)	No. 12-P-1005
	)	Honorable Nancy S. Waites, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed petitioner's will contest: petitioner's affirmative decision to accept even partial distributions under the will amounted to an election; she did not allege any new knowledge of the circumstances of the will's execution so as to establish an exception, and she did not develop her assertion that the will's illegality established another exception.

¶ 2 Stephanie Diaz Rodriguez, the daughter of decedent, Juan Manuel Rodriguez, and his sole heir-at-law, appeals from the dismissal (pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012))) of her petition to contest decedent's will. She asserts that the court erred in ruling that, because she accepted distributions that relied on her status as a legatee, she was barred under the equitable doctrine of election from

challenging the will. We are unpersuaded by Stephanie's arguments. We thus affirm the dismissal.

¶ 3 I. BACKGROUND

¶ 4 On December 4, 2012, Maria Diaz filed a petition for probate of the will of decedent. (Decedent had died on November 30, 2012.) The will stated that decedent had 13 siblings then alive. It further stated that he had one child living, Stephanie Diaz Rodriguez. The will, executed in April 2012, gave the bulk of his estate in equal shares to his mother, to his siblings or their descendants, and to Stephanie or her descendants. The court admitted the will and appointed Maria the executor.

¶ 5 On January 30, 2013, Stephanie filed a petition for a child's award under section 15-2(b) of the Probate Act of 1975 (755 ILCS 5/15-2(b) (West 2012)). She alleged that decedent and her mother, Olga Rodriguez, had lived together for 30 years without marrying. When Stephanie was 16 years old, an accident rendered decedent quadriplegic. For 3½ years, between the accident and the time when decedent received a settlement from the party responsible for the accident, Stephanie had cared for decedent, dropping out of high school to do so. Because she did not have a diploma, she had been unable to find a job. Further, the estate had taken possession of the vehicles that she was accustomed to driving. She alleged that the estate had assets of the order of $12 million. A later version of the petition, filed February 28, 2013, specifically mentioned that Stephanie was due a 1/15 share of the estate under the will.

¶ 6 The executor denied that Stephanie was a dependent, denied that she had contributed significantly to decedent's care, and asserted that Stephanie lived with Olga in a house that decedent had deeded to Olga.

¶ 7 The court denied a child's award, but, on March 11, 2013, granted Stephanie $30,000, "[t]his sum *** to be a part of the distributive share of *** the Estate."

¶ 8 On April 15, 2013, Stephanie filed a petition to contest the will's validity, alleging, among other things, that the will was improperly executed and that decedent had lacked testamentary capacity.

¶ 9 On August 2, 2013, Stephanie filed a petition seeking a second $30,000 distribution from the estate. The court granted the distribution over the Maria's objection.

¶ 10 Maria moved to dismiss Stephanie's will contest, citing section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012) ("the claim *** is barred by other affirmative matter"). Maria asserted that Stephanie's receipt of the two distributions from the estate estopped her to challenge the will. The motion noted Stephanie's apparent reliance on her being a legatee in seeking the distributions. The executor argued that Stephanie had accepted benefits under the will, and therefore, under the doctrine of election, was barred from challenging the will.

¶ 11 Stephanie filed a response in which she asserted that the doctrine of election did not apply for two reasons: one, because she had been unable to learn the circumstances surrounding the will's execution and, two, because, given that she was decedent's sole heir-at-law, the distributions were consistent with an intestate distribution. Maria filed a reply.

¶ 12 The court granted the motion to dismiss after hearing arguments from the parties. It ruled that Stephanie's receipt of the two distributions, combined with the fact that she was not going to repay those distributions, barred her from contesting the will. Stephanie timely appealed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Stephanie argues that, because the disbursements were interim distributions and did not satisfy the bequest, her seeking of them did not constitute an election. Specifically,

she argues that this is so because the distributions were part of an ongoing pattern of support from her father. She analogizes the circumstances to those in *In re Estate of MacLeish*, 46 Ill. App. 3d 957 (1977), in which the reviewing court held that a son's remaining in a house that he had rented from his father and in which the father had willed him a life estate was not an election. She also argues that, because the distributions she received did not fully satisfy the bequest, her receipt of the distributions was not an election.

¶ 15 Stephanie argues in the alternative that two exceptions to the doctrine of election applied: (1) that she was unaware of, and remains unaware of, the circumstances of the will's execution, and (2) that the will "contravenes Illinois law" in that the attestations were not completed at the same time that decedent signed the will. Stephanie does not contest Maria's underlying premise that the doctrine of election could apply to the sole heir's decision to accept distributions under a will.

¶ 16 None of the bases Stephanie gives for denying the doctrine of election's applicability is availing. We consider first her argument that her receipt of the distributions did not constitute an election. We find no support in the case law for that assertion. Her arguments that two exceptions to the doctrine of election fail, the first because Stephanie has failed to show that she had any new knowledge about the circumstances of the will's execution, the second because Stephanie has failed to adequately argue the point and has thus forfeited it.

¶ 17 The court dismissed Stephanie's will contest pursuant to section 2-619(a) of the Code. "A motion to dismiss under section 2-619(a) admits the legal sufficiency of the [initial pleading], but asserts that the claim asserted *** is barred by some affirmative matter which avoids the legal effect of or defeats the claim." *In re Estate of Boyar*, 2013 IL 113655, ¶ 27. "The motion should be granted only if the plaintiff can prove no set of facts that would support a cause of

action." *Boyar*, 2013 IL 113655, ¶ 27. "Section 2-619 motions present a question of law, and *** review is *de novo*." *Boyar*, 2013 IL 113655, ¶ 27.

¶ 18 The doctrine of election comes into play when a person who could take property under a will has "two inconsistent or alternative claims to property devised by the testator." *Boyar*, 2013 IL 113655, ¶ 30 (citing *Remillard v. Remillard*, 6 Ill. 2d 567 (1955) and *Lloyd v. Treasurer of the State*, 401 Ill. 520, 525-26 (1948)). "Election under a will consists in the exercise of a choice offered a devisee or legatee of either accepting its benefits and surrendering some claim, right or property which the will undertakes to dispose of, or of retaining his claim, right or property, and rejecting the provisions made for him by the will." *Lloyd*, 401 Ill. at 525-26.

¶ 19 Stephanie argues that her choice to receive distributions from the estate did not amount to an election. She makes two arguments in favor of that contention, neither of which is successful.

¶ 20 First, she argues that the circumstances here are analogous to those in *MacLeish*. *MacLeish* is plainly distinguishable: the "election" at issue in that decision was essentially a failure to act, and not an active seeking of benefits like Stephanie's.

¶ 21 In *MacLeish*, a father's will gave his son the lifetime use of a house that the son had leased from his father for decades. *MacLeish*, 46 Ill. App. 3d at 958-59. The son did not make rental payments after his father's death, and the executors requested none. *MacLeish*, 46 Ill. App. 3d at 959. When the son sued to contest the will, the executors moved to dismiss on the ground that the son's remaining in the house amounted to an election to take under the will. *MacLeish*, 46 Ill. App. 3d at 959. At the hearing on the motion to dismiss, the executors, in response to the court's skepticism that the son had made an election, argued that, should the court permit the son to go forward with the will contest, it ought to be on the condition that he make his election to do so by leaving the house and paying back rent. The court ultimately

agreed. *MacLeish*, 46 Ill. App. 3d at 959-60. The son offered evidence that he lacked the money to pay back rent. Nevertheless, before the next status date, he had at least partially vacated the house. *MacLeish*, 46 Ill. App. 3d at 960. The reviewing court held, without specific explanation, that "the first time that the [son] was afforded an election" was when the trial court entered its order requiring him to make the choice. *MacLeish*, 46 Ill. App. 3d at 961. It also held that, because the evidence showed that the son could not afford to pay back rent, the election into which the court's order had forced the son was not a valid one. *MacLeish*, 46 Ill. App. 3d at 961-62.

¶ 22 The circumstances here have little in common with those in *MacLeish*. In *MacLeish*, the son simply remained in the house in which he had been living, whereas Stephanie actively sought both distributions. *MacLeish* is not the only modern case to hold that remaining in a long-time residence should be treated as an election only where evidence exists of a deliberate choice: the holding in *In re of Estate of Nichols*, 188 Ill. App. 3d 724 (1989), is similar. In both those decisions, the concern was to avoid deeming passivity to be an election. That concern is not in play here, as the decision to seek distributions was an active one.

¶ 23 Stephanie also asserts that, because the distributions to her did not satisfy her claims under the will, we must conclude that those distributions did not result in an election to take under the will. In other words, she argues that the partial satisfaction distinguishes this case from others in which courts held that elections had occurred. Assuming that Stephanie is correct that this is a distinction, the argument still fails, as she makes no argument that it is a *relevant* distinction. Indeed, the rationale for the doctrine of election implies that the distinction is irrelevant. As we previously set out, "[e]lection under a will consists in *the exercise of a choice* offered a devisee or legatee of either accepting its benefits ***, or of retaining his claim *** and

rejecting the provisions made for him by the will." (Emphasis added.) *Lloyd*, 401 Ill. at 525. That Stephanie did not receive the whole of the legacy does not change that, in seeking to receive a part of it, she exercised a choice.

¶ 24 We now address Stephanie's argument that, because she lacked awareness of the circumstances surrounding the will's execution, she did not make a valid election. We hold that she did not demonstrate the requisite change in knowledge. "[I]f a person makes an election without full knowledge of the material facts, including knowledge of the contents of the will and the circumstances of its execution, the election will not prevent a subsequent assertion of rights after the person becomes cognizant of those facts." *Boyar*, 2013 IL 113655, ¶ 32. Thus, to the extent that a legatee can reverse an election, that reversal can occur only if the legatee shows that he or she has knowledge unavailable at the time of the election. Stephanie has not alleged the existence of such new knowledge.

¶ 25 Finally, Stephanie has forfeited her argument that her will contest comes within the exception to the doctrine of election for a will that is illegal or contrary to public policy. She has failed to do more than hint at her claim of error. She states:

> "It appears that the attestation was not completed until *** eight (8) days after the will was signed. As the attestation does not appear to comply with Illinois law relative to will attestations, the Plaintiff's receipt of the distributions should not bar her right to proceed on the Will Contest Complaint in this matter."

Beyond this brief statement of her position, Stephanie fails to explain her position and fails entirely to cite any case law in support of her argument. We frequently remind appellants that reviewing courts do not exist to do litigants' research and writing for them. *E.g.*, *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 ("The appellate court is not a repository into

which an appellant may foist the burden of argument and research."). Under Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), points not argued are forfeited, and a "failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument." *Ramos*, 2013 IL App (3d) 120001, ¶ 37. Development and support with relevant authority are absent from this portion of Stephanie's brief.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the dismissal of Stephanie's will contest.

¶ 28 Affirmed.