
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF GLENN L. FELNER,	)	Appeal from the
Deceased	)	Circuit Court of Cook County,
	)	Probate Division.
(Dylan Britt, Sara Crocenzi, and Lorna	)	
Sonen,	)	
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 2024 P 4556
	)	
Bonnie Felner, Donald J. Russ Jr., Tyler	)	
Britt, Kyle Britt, Melissa Christiano, and	)	
Monica Felner,	)	Honorable
	)	Terrence J. McGuire,
Respondents-Appellees).	)	Judge, presiding.

JUSTICE MITCHELL delivered the judgment of the court, with opinion.
Presiding Justice Lyle and Justice Ocasio concurred in the judgment and opinion.

OPINION

¶ 1 Petitioners Dylan Britt, Sara Crocenzi, and Lorna Sonen appeal the admission of decedent Glenn L. Felner’s will to probate following a formal proof-of-will hearing. The principal issue on appeal is whether the circuit court’s decision to admit Felner’s will to probate was against the manifest weight of the evidence because the respondents failed to establish that the will was executed in substantial compliance with the Electronic Wills, Electronic Estate Planning

Documents, and Remote Witnesses Act. 755 ILCS 6/1-1 *et seq.* (West 2022). For the following reasons, we affirm.

¶ 2

I. BACKGROUND

¶ 3 Traditionally, to execute a valid will in Illinois, the will had to be in writing, signed by the testator, and attested to in the testator's presence by at least two witnesses. 755 ILCS 5/4-3(a) (West 2020). To admit the will to probate, the witnesses were required to state that they were present and saw the testator sign the will, that the will was attested by them in the testator's presence, and that they believed the testator to be of sound mind and memory when signing the will. *Id.* § 6-4(a).

¶ 4 At the outset of the COVID-19 pandemic in March 2020, the Illinois governor issued an executive order that authorized acts of witnessing to be conducted remotely by two-way audio-video communication, subject to specified procedural requirements. Exec. Order No. 2020-14 § 2, 44 Ill. Reg. 5961-63 (Mar. 26, 2020). Subsequently, the General Assembly enacted the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act. 755 ILCS 6/1-1 *et seq.* The Act authorized remote witnessing during the COVID-19 emergency declaration provided that the act of witnessing and the technology used “substantially compl[ied]” with nine enumerated formalities similar to those in the executive order. *Id.* § 15-20(a), (d)(1)-(9). The Act was “effective March 26, 2020,” the date of the executive order. *Id.* § 15-20(b).

¶ 5 On May 24, 2020, Felner executed a will in front of two remote witnesses via two-way audio-video communication. After Felner passed away, Donald J. Russ Jr. petitioned the circuit court of Cook County to admit the will to probate, and the circuit court appointed Russ as independent executor. Petitioners subsequently initiated a trust contest, alleging, among other

things, that Felner's second wife, respondent Bonnie Felner, exerted undue influence over Felner. Dylan Britt, Felner's grandson, also petitioned for formal proof of the will pursuant to section 6-21 of the Probate Act of 1975. 755 ILCS 5/6-21.

¶ 6 The circuit court held a proof-of-will hearing. It heard testimony from the two attesting witnesses to the will, Richard Davis and his daughter, Katelyn Davis. They testified that Kathleen Davis, Richard's wife and Katelyn's mother, worked at the law firm that prepared Felner's will and asked them to serve as witnesses. At the time of signing, Richard, Katelyn, and Kathleen Davis were together in their home in Palos Heights, Illinois, while Kathleen Davis remotely guided Felner through the execution of the will. The witnesses testified that they were able to see and hear Felner through the video connection.

¶ 7 Richard and Katelyn Davis testified that they believed Felner was of sound mind and memory based upon his interactions with Kathleen Davis. They also testified that Felner understood that he was signing his will, that Kathleen Davis explained the documents to him, and that they could see Felner sign the pages of the document. Both witnesses verified their signatures as attesting witnesses.

¶ 8 The circuit court admitted the will to probate. 755 ILCS 5/6-4. This timely appeal followed. Ill. S. Ct. R. 303 (eff. July 1, 2017); R. 304(b)(1) (eff. Mar. 8, 2016).

¶ 9 II. ANALYSIS

¶ 10 A.

¶ 11 As a threshold matter, the parties dispute whether the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act applies. Petitioners argue that Felner's will could only be admitted to probate if the witnessing complied with the executive order and the Act's

procedural formalities for remote witnessing. Respondents maintain they needed only to establish the traditional will formalities under section 6-4 of the Probate Act because the Remote Witnesses Act had not yet been passed when Felner executed his will. We review questions of statutory interpretation *de novo*. *Grady v. Illinois Department of Healthcare & Family Services*, 2016 IL App (1st) 152402, ¶ 9; see *People v. Lanier*, 2025 IL App (1st) 242603, ¶ 52 (explaining that *de novo* review means “the reviewing court stands in the same position as the circuit court” (internal quotation marks omitted)).

¶ 12 Under the Probate Act, heirs and legatees of the decedent may petition for formal proof of the will. 755 ILCS 5/6-10, 6-21 (West 2022). At a formal proof-of-will hearing, the proponent of the will must establish by “sufficient competent evidence” that the will was executed according to the applicable statutory requirements. *Id.* § 6-21; *In re Estate of Smith*, 282 Ill. App. 3d 389, 392-93 (1996). The proponent “need not show that the will is valid in all respects.” *Matter of Ketter’s Estate*, 63 Ill. App. 3d 796, 800 (1978).

¶ 13 The Remote Witnesses Act governs formal proof of a will witnessed remotely under the COVID-19 emergency declaration. 755 ILCS 6/20-45 (West 2022). It provides that testimony or other evidence shall establish that the testator and remote witness substantially complied with the requirements of the Act and that “the remote witness believed the testator to be of sound mind and memory at the time of signing.” *Id.*

¶ 14 In turn, the Act provides that “[a]n act of witnessing and the technology used in the audio-video communication shall substantially comply” with nine specified procedures nearly identical to those in the executive order. *Id.* § 15-20(d). Those procedures concern, among other things, recording and preservation of the audio-video communication, the physical location of the

signatory and witnesses, identification of the document being signed, presentation of the document to the witnesses, observation of the signing, and transmission and return of the signed document. *Id.* § 15-20(d)(1)-(9).

¶ 15 The executive order had an effective date of March 26, 2020, over eight weeks before Felner executed his will on May 24, 2020. The Act had an effective date of July 26, 2021, over two and a half years before Russ petitioned to probate Felner’s will on June 26, 2024. *Id.* Thus, a straightforward application of the effective dates of the executive order and the Act establishes that the procedural formalities applied to Felner’s will: The executive order laid out the requirements well in advance of the execution of the will, and they were codified by the legislature well in advance of the petition to admit it to probate.

¶ 16 Further, the Act provides that it has retroactive application. It permitted acts of witnessing via two-way audio-video communication “effective March 26, 2020,” the effective date of the executive order. *Id.* § 15-20(b). Thus, the remote witnessing of Felner’s will on May 24, 2020, follows the retroactive date of the Act. See *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 19 (explaining if the legislature “has clearly indicated the temporal reach” of a statutory amendment, “that expression of legislative intent must be given effect, absent a constitutional prohibition”).

¶ 17 Respondents’ reading of the Act is misguided. They note that the only subsection that discusses retroactivity is subsection (b), which gives effect to prior acts of remote witnessing. And they emphasize that subsection (d), enumerating the remote witnessing formalities, does not discuss retroactivity. They therefore argue the Act retroactively permitted remote witnessing, but it did not retroactively apply the procedural formalities. This argument, however, belies basic

principles of statutory interpretation. We cannot give effect to acts of remote witnessing under the executive order and the Act but ignore their procedural formalities. The Illinois Supreme Court has explained that “[t]he primary objective of statutory construction is to ascertain and give effect to the legislature’s intent. ***. The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. [Citation.] A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation.” *Evans v. Cook County State’s Attorney*, 2021 IL 125513, ¶ 27.

¶ 18 Here, the Act expressly states that its purpose is to give effect to the executive order that had nearly identical procedural formalities. 755 ILCS 6/15-20(a) (“The purpose of this section is to give statutory approval to the notary and witness guidelines provided in Executive Order 2020-14.”). Further, the formal proof of will provision of the Act mandates that the proponent of a will witnessed remotely during the COVID-19 emergency declaration must demonstrate substantial compliance with the procedural formalities under section 15-20 of the Act. *Id.* § 20-45. Thus, applying the plain language of the Act and construing it as a whole, the legislature intended for the procedural requirements to apply to any act of remote witnessing during the COVID-19 outbreak.

¶ 19 B.

¶ 20 Petitioners argue that the circuit court erred in admitting the will to probate because respondents did not establish substantial compliance with the procedural formalities for remote witnessing under the Act. “The law favors admission of a will to probate in order that the administration of the estate may proceed.” Michael P. McElroy, *Horner Probate Practice & Estates* § 5:20 (4th ed. 2001). Generally, whether substantial compliance will suffice under a mandatory statute is a question of law that we review *de novo*. *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086

(2009). Here, however, the statute explicitly mandates substantial compliance, 755 ILCS 6/15-20(d), 20-45, and the question is whether, based on the witnesses' testimony before the circuit court, the act of witnessing did in fact substantially comply with the statutory requirements to support the will's admission to probate. We review that sort of factual determination based on credibility findings under the manifest weight of the evidence standard. See *Smith*, 282 Ill. App. 3d at 393 ("We will not reverse the trial court's decision to admit a will to probate unless it is against the manifest weight of the evidence."). A ruling is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when the ruling is unreasonable, arbitrary, or not based on the evidence. *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96 (2010).

¶ 21 The Act provides the following procedural formalities in order to accomplish remote witnessing:

"An act of witnessing and the technology used in the audio-video communication shall substantially comply with the following process:

- (1) the 2-way audio-video communication shall be recorded and preserved by the signatory or the signatory's designee for a period of at least 3 years;
- (2) the signatory shall attest to being physically located in the State during the 2-way audio video communication;
- (3) the witness shall attest to being physically located in the State during the 2-way audio-video communication;
- (4) the signatory shall affirmatively state on the 2-way audio-video communication what document the signatory is signing;
- (5) each page of the document being witnessed shall be shown to the witness on the 2-way audio-video communication technology in a means clearly legible to the witness;
- (6) the act of signing shall be captured sufficiently up close on the 2-way audio-video communication for the witness to observe;

- (7) the signatory shall transmit by overnight mail, fax, electronic, or other means a legible copy of the entire signed document directly to the witness no later than the day after the document is signed;
- (8) the witness shall sign the transmitted copy of the document as a witness and transmit the signed copy of the document back via overnight mail, fax, electronic, or other means to the signatory within 24 hours of receipt; and
- (9) if necessary, the witness may sign the original signed document as of the date of the original execution by the signatory if the witness receives the original signed document together with the electronically witnessed copy within 30 days from the date of the remote witnessing.” 755 ILCS 6/15-20(d)(1)-(9).

See generally *People v. Sroga*, 2022 IL 126978, ¶ 31 (explaining use of the word “shall” is “construed as a clear expression of legislative intent to impose a mandatory obligation” (internal quotation marks omitted)).

¶ 22 No appellate decision has yet construed the phrase “substantially complied” as used in the Act, but the doctrine of substantial compliance is well established in Illinois law. Under that doctrine, even a mandatory statutory provision may sometimes be satisfied through substantial rather than strict compliance. *Behl*, 396 Ill. App. 3d at 1086; *Kennedy v. City of Chicago*, 2022 IL App (1st) 210492, ¶ 39. The inquiry has two components: first, whether the statutory purpose was achieved without strict compliance; and second, whether the opposing party suffered prejudice from the deviation. *Behl*, 396 Ill. App. 3d at 1086; *Kennedy*, 2022 IL App (1st) 210492, ¶ 39; *Matter of Abbott’s Estate*, 38 Ill. App. 3d 141, 144-45 (1976) (determining that a party’s imperfect compliance with procedural requirements for removal of an executor was “substantially sufficient” where the notice accorded “with the intent and purpose of the Probate Act” and the executor “was not prejudiced by formal deficiencies in procedure”). Thus, the ultimate question is not whether respondents established, through separate testimony, each individual step in precisely the manner

prescribed. The question is whether the evidence establishes that the essential purposes of the statutory procedure were achieved and whether any deviation prejudiced petitioners.

¶ 23 The Act states that its purpose is “to provide for *** the valid execution, attestation, self-proving, and probate of *** wills attested to by witnesses through audio-video communication,” 755 ILCS 6/1-5, and, more specifically, “to give statutory approval to the notary and witness guidelines provided in Executive Order 2020-14.” *Id.* § 15-20(a). In turn, the executive order acknowledged the need to “immediately take measures to promote and secure the safety and protection of the people of the State in response to this COVID-19 outbreak while ensuring that all Illinois residents may continue to make vital personal and business decisions and finalize necessary documents[.]” Exec. Order No. 2020-14 § 2, 44 Ill. Reg. 5961-63 (Mar. 26, 2020). In other words, the purpose of the requirements for remote witnessing was to balance the need to ensure valid execution of legal documents with the exigent threat to public health posed by COVID-19. The nine procedural requirements in the remote witnessing provision therefore serve identifiable purposes. They ensure the integrity and reliability of remote witnessing by establishing the locations of the participants, requiring contemporaneous observation of the execution, creating a record of the event, and providing a reliable means of transmitting and returning the signed instrument. 755 ILCS 6/15-20(d)(1)-(9).

¶ 24 Petitioners emphasize the absence of testimony concerning preservation of the recording, Felner’s statement concerning his physical location, the legibility of the document on the video connection, and the mechanics and timing of transmission of the signed document. While the evidence did not establish strict compliance with every procedural step, that is not the statutory standard. “[S]ubstantial compliance requires communicating the statute’s essence, rather than

wholly what is specified in the statute.” (Internal quotation marks omitted.). *Cf. People v. Hietschold*, 2025 IL 130716, ¶ 32 (examining substantial compliance under the Code of Criminal Procedure of 1963 regarding admonishments about the defendant’s trial *in absentia*). The evidence established the central features of the statutory scheme: the witnesses were contemporaneously connected to the execution, they could observe the testator, they could observe his signing of the document, they understood, as did the testator, the nature of the document being executed, and they were able to attest to what they observed.

¶ 25 Specifically, the record establishes that Felner executed the will through the two-way audio-video process. 755 ILCS 6/15-20(b) (permitting remote witnessing “through means of 2-way audio-video communication technology that allows for direct contemporaneous interaction by sight and sound between the individual signing the document [and] the witness”). The witnesses testified that they could see, hear, and communicate with Felner while Kathleen Davis guided him through the execution. *Id.* § 15-20(d)(6) (“[T]he act of signing shall be captured sufficiently up close on the 2-way audio-video communication for the witness to observe.”). They were physically present together in Palos Heights, Illinois. *Id.* § 15-20(d)(3) (“[T]he witness shall attest to being physically located in the State during the 2-way audio-video communication[.]”).

¶ 26 The witnesses observed Felner review and sign or initial each page of the will. *Id.* § 15-20(d)(5) (“[E]ach page of the document being witnessed shall be shown to the witness on the 2-way audio-video communication technology in a means clearly legible to the witness[.]”), (6). They testified that Felner acknowledged that the document he was signing was his last will and testament, and they believed him to be of sound mind and memory. *Id.* § 15-20(d)(4) (“[T]he signatory shall affirmatively state on the 2-way audio-video communication what document the

signatory is signing.”); *id.* § 6/20-25(3) (requiring that, to admit a will signed during the COVID-19 emergency declaration to probate, at least two attesting witnesses must “testify in court that the testator and remote witness substantially complied with Section 15-20 and that the remote witness believed the testator to be of sound mind and memory at the time of the signing”). Both witnesses ultimately attested to and signed the will. *Id.* § 15-20(d)(8) (requiring the witness to sign a copy of the document that the signatory transmitted to him or her within 24 hours of receipt).

¶ 27 The second part of the inquiry—prejudice—is equally important. As petitioners point out, there are procedural requirements for which respondents submitted weak or no evidence. For example, while the witnesses testified that the will execution had been recorded, respondents did not offer any testimony as to whether they had retained the recording for three years as required by the statute. When the will was admitted, that three-year retention period had expired. Petitioners cannot have been prejudiced by the failure to retain the recording for three years when, by the time they petitioned for formal proof of will, respondents were under no obligation to retain it.

¶ 28 Similarly, while the witnesses did testify that they were both within Illinois at the time of signing, the evidence concerning Felner’s location was less direct. The witnesses could not recall whether he expressly stated his location during the communication. The evidence established that Felner was an Illinois resident, that the will itself identified him as a resident of Winnetka, Illinois, and that the remote execution occurred during a period in which Illinois residents were subject to significant COVID-19-related travel restrictions.

¶ 29 A post-execution finding of residence is not equivalent to an express contemporaneous attestation. But substantial compliance does not require that the statutory purpose be accomplished through the precise verbal formula selected by the legislature. The relevant question is whether the

deviation undermined the integrity of the remote execution or prejudiced an interested party. Considering the strength of the evidence that Felner did in fact sign the document understanding it to be his last will and testament, this evidentiary gap does not warrant rejecting the will.

¶ 30 Petitioners also emphasize that the witnesses did not testify expressly that every page of the will was legible to them. But the witnesses' testimony established that they could see Felner sign or initial each page. The purpose of this requirement is to ensure that the witnesses can meaningfully observe the document being executed. That purpose was substantially achieved.

¶ 31 As for the lack of evidence concerning transmission of the signed document, respondents established that the witnesses ultimately attested to and signed the original will. Nothing in the record suggests that the witnesses signed a document different from the one Felner executed, that the document was altered between execution and attestation, or that petitioners were unable to examine the instrument or challenge its authenticity.

¶ 32 Ultimately, petitioners identify no prejudice resulting from the deviations they identify. They do not contend that an unauthorized person participated in the execution, that either witness did not actually observe Felner sign, that the document was changed after Felner signed it, that the witnesses signed a different instrument, or that the remote process prevented them from meaningfully evaluating the execution. Petitioners instead rely on the absence of evidence of strict compliance with several procedural requirements. But the absence of strict compliance is not itself prejudice. The substantial-compliance doctrine would have little work to do if every deviation from a mandatory provision were treated as fatal without regard to the purpose of the provision or the consequences of the deviation.

¶ 33 We are also mindful that a proof-of-will proceeding is a limited proceeding. The question

is whether the proponent has established the statutory prerequisites for admission to probate; it is not a trial of every issue that might bear upon the ultimate validity of the will. See *In re Estate of Alfaro*, 301 Ill. App. 3d 500, 503 (1998). The legislature has provided a separate will-contest procedure through which interested parties may litigate fraud, undue influence, testamentary capacity, and other challenges to the validity of the instrument. Indeed, petitioners have already initiated a will contest, which the circuit court has stayed pending appeal. Some courts have held that the initiation of a will contest moots an appeal from an order admitting the will to probate. See, e.g., *In re Estate of Lewis*, 213 Ill. App. 3d 113, 115 (1991). The question presented in this appeal, however, is one of recurring importance in the administration of estates and the circumstances giving rise to the issue are likely to recur. As a consequence, we decide the case on its merits. *McHenry Township v. County of McHenry*, 2022 IL 127258, ¶ 50 (recognizing exceptions to the mootness doctrine).

¶ 34 Applying the substantial-compliance framework, we conclude that the essential purposes of the Act were achieved. The remote execution was sufficiently documented and observed to provide a reliable basis for determining proper will execution. The evidence does not establish that any deviation compromised the identity of the participants, the authenticity of the execution, or the integrity of the testamentary instrument. And petitioners have identified no prejudice resulting from the deviations. Therefore, the circuit court's finding of substantial compliance with the Act is not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.

In re Estate of Glenn L. Felner, 2026 IL App (1st) 251143

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 2024 P 4556; the Hon. Terrence J. McGuire, Judge, presiding.

**Attorneys
for
Appellants:** Melissa Johnson and Dirk Bromberek, of Generation Law, Ltd.,
for appellants.

**Attorneys
for
Appellee:** Robert S. Reda, of Reda & Des Jardins, Ltd., for appellee Bonnie
Felner, and Carrie A. Conlon and Molly A. Ward, of Chuhak &
Tecson, P.C., for appellee Donald J. Russ Jr.
