NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 260128-U

NO. 4-26-0128

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 8, 2026
Carla Bender
4th District Appellate
Court, IL

In re ESTATE OF JOANN L. RENKEN, Deceased,	)	Appeal from the
	)	Circuit Court of
(The Central Illinois District Endowment Fund,	)	Mason County
Petitioner-Appellant,	)	No. 23PR12
v.	)	
Becky Shelton and the International Lutheran Laymen's	)	Honorable
League,	)	Kevin D. Tippey,
Respondents-Appellees).	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Knecht and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's order denying the petitioner's motion for summary judgment and granting respondent Becky Shelton's cross-motion for summary judgment, finding (1) petitioner bore the burden of proving its claim against an estate, including the burden of proving the testator's bequest to it was not adeemed and (2) the testator's bequest of real estate to petitioner was adeemed where her power of attorney for property sold the real estate while the testator was still living and competent.

¶ 2 In 2010, Joann L. Renken executed a will leaving an interest in certain Mason County real estate (Parcel) to petitioner, the Central Illinois District Endowment Fund (CILDEF). In 2022, Joann appointed a power of attorney (POA) for property, who sold the Parcel. After Joann died in 2023, CILDEF asserted a claim against her estate for the value of the Parcel. CILDEF and Becky Shelton, acting as administrator of Joann's estate, each filed competing motions for summary judgment. The trial court granted Shelton's motion and denied CILDEF's motion, finding that the sale of the Parcel adeemed, or extinguished, Joann's bequest

to CILDEF.

¶ 3 CILDEF appeals the trial court's order. It argues that Shelton bore the burden of proving that the explicit bequest in Joann's will was adeemed. It further argues that the bequest was not adeemed because Joann herself did not sell the Parcel, but her POA did.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2010, Joann executed a last will and testament. She named her husband, J. Weldon Renken, as her executor, and her son, Mark Renken, as successor executor. In Article 3 of her will, she left her interest in the Parcel to Weldon during his lifetime. She also gave Weldon a limited power of appointment, allowing him to select the recipient of the remainder interest. At the same time, Weldon executed his own will, with parallel provisions. Both Weldon's and Joann's will stated that, in the default exercise of their powers of appointment, they selected CILDEF to receive the remainder interest.

¶ 7 On January 24, 2022, Joann executed a statutory short form POA for property, naming Mark as her POA for property. See 755 ILCS 45/3-4 (West 2022). Specifically, the form stated that Joann appointed Mark as her "Attorney-in-Fact ([her] 'Agent') to act for [her] and in [her] name (in any way [she] could act in person) with respect" to a list of powers. Those powers included the power over "Real estate transactions," "Estate transactions," and "All other property powers and transactions." Joann's signature appears at the end of the form, along with a certification from a notary and a witness. The witness, attorney Jacob Schlosser, further attested, "I believe [Joann] to be of sound mind and memory."

¶ 8 The POA included an attached "Notice to Agent." This notice stated:

> "As agent you must

(1) do what you know the principal reasonably expects you to do with the principal's property;

* * *

(4) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest[.]"

¶ 9 In March 2022, Mark executed a warranty deed, conveying the Parcel to Delayne and Brittany Durdle for $909,880. Mark then executed a "Quit Claim Bill of Sale of Personal Property," conveying Joann's interest in improvements on the Parcel to the same buyers.

¶ 10 Joann died on January 18, 2023. On March 30, 2023, Joann's daughter, Shelton, filed a petition for letters of administration. The petition stated that Shelton was unable to locate any will for Joann. She further asked to be appointed as independent administrator for Joann's estate. The following day, the trial court appointed her as administrator.

¶ 11 In November 2023, Shelton filed a petition with the trial court seeking to convert the proceedings to probate. In this petition, Shelton stated that after her appointment as administrator, she discovered Joann's 2010 will and deposited that will with the Mason County circuit clerk. Although the will nominated Weldon as executor, Weldon had died before Joann. Moreover, the will nominated Mark as successor executor, but Mark declined to fill this role. Shelton asked that the will be admitted to probate and that she be appointed as independent administrator of the estate. She further provided the names and addresses of the beneficiaries named in the 2010 will, including CILDEF and the International Lutheran Laymen's League. The court admitted the will to probate and appointed Shelton as independent administrator.

¶ 12 In February 2024, CILDEF filed a claim against the estate for $909,880. CILDEF

referred to the provision in Joann's will bequeathing it the Parcel, claiming that it was entitled to the proceeds from the sale of that property by Mark, Joann's POA.

¶ 13 Shelton and the International Lutheran Layman's League each objected to CILDEF's claim, arguing that the claim was untimely and that CILDEF was not a valid creditor. In response, CILDEF insisted that its claim was timely and that it was entitled to the value of the real estate that Joann explicitly bequeathed to it in her will. In July 2024, the trial court denied Shelton's and Lutheran Laymen League's objections to the timeliness of CILDEF's claim. Later, the court terminated Shelton as independent administrator and issued her amended letters testamentary.

¶ 14 The parties then proceeded to discovery on CILDEF's claim against the estate. Shelton deposed Schlosser. He testified that he drafted a POA for property for Joann. When asked about the "circumstances that lead to [him] drafting" the POA, he answered,

> "[W]e want to make sure that the documents were clear that the person who was the current [POA] had [POA] abilities because he was working on a land transaction for Joann to pay for her in-home care and we wanted to make for certain that there weren't going to be any issues with, with his ability to do so."

Schlosser explained that Joann owned multiple parcels of land, and some of them were selected to sell "for ease of sale purposes to, to sell to the tenant at the time to pay for her in-home care." When asked if he met with Joann to discuss this transaction, Schlosser answered, "We discussed it when we had met for [POA] and I can't remember if we did a will or not I feel like we did but, but when I met with her multiple times to sign documents and every time we talked." He added, "And so I wanted to make sure she kind of understood what was going on and what documents she was signing, and why she was signing it or ask her why she thought she wanted to sign

them." Schlosser could not remember any conversations concerning why the specific parcels were being sold, rather than other parcels.

¶ 15 Later, Schlosser explained, "I talked to her about really the existence of all four or five of the parcels and that there were two in particular that *** the kids were not part of in terms of ownership interest and that also she had either all or part of the interest in." He was asked if Joann was aware of the location of the parcels, and he answered,

> "In terms of the whole, they're altogether I'm not entirely sure she was positive which 40 on top of which 40 on top of which 40. I might have referred to them because I did multiple conversations in the firm, too, as I think it was like the middle 40. But, and at that time Mark had nicknames for them that I sometimes would use. I can't remember which was Dad's 40 and which was one Grand Dad's 40, but it was or 80 maybe again."

¶ 16 Schlosser testified that every time he met with Joann, she knew who she was. His firm's policy required a series of questions before signing any document confirming that the client understood the document. Schlosser had no question that Joann had the capacity to sign the documents. Schlosser met with Mark or talked to him on the phone many times. When asked if Mark ever discussed the reason for selling the property, Schlosser answered,

> "Joann had in-home care and I'm not entirely sure where they were on liquid assets but the general impression I had was they were running low, and so the purpose of the sale was to get some liquidity back into Joann's finances so that they could pay for the in-home care."

Schlosser did not remember Joann ever telling him that she needed money for care, but he testified that he told Joann, "[This] was the reason we were doing or that Mark wanted to go

through with the sale and she didn't correct me or question it."

¶ 17 In September 2025, CILDEF moved for summary judgment. CILDEF asserted that Joann's will explicitly left the Parcel to it. CILDEF claimed that Shelton bore the burden of proving that Joann intended to adeem this bequest. According to CILDEF, Shelton could not meet this burden because neither Mark nor Shelton was aware of Joann's will before 2023, and Mark, as her POA, sold the property, not Joann herself.

¶ 18 Shelton filed a response and cross-motion for summary judgment. She insisted that CILDEF bore the burden of proving its claim against the estate by a preponderance of the evidence. She argued that the bequest of the Parcel to CILDEF was adeemed when Mark sold the real estate as Joann's agent because she was competent at the time of the sale.

¶ 19 In an order dated January 7, 2026, the trial court denied CILDEF's motion for summary judgment and granted Shelton's cross-motion for summary judgment. The court found,

> "In this case, it is undisputed that the specific bequest was no longer in the Estate of the Decedent and that the Decedent directed the sale of the property subject to the specific bequest. The Decedent is not alleged to have been incompetent and engaged counsel to assist in the transfer of property."

The court concluded that because Joann voluntarily sold the property through Mark, the gift was adeemed, and Shelton was entitled to judgment as a matter of law.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 CILDEF appeals the trial court's order granting summary judgment in Shelton's favor. "Summary judgment is proper where the pleadings, affidavits, depositions, admissions, and exhibits, when viewed in a light most favorable to the nonmoving party, demonstrate that

there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Ruby v. Ruby*, 2012 IL App (1st) 103210, ¶ 13; 735 ILCS 5/2-1005(c) (West 2024). "Where, as here, the parties file cross-motions for summary judgment, they concede there are no genuine issues of material fact and invite the court to decide questions presented as a matter of law." *Koulogeorge v. Campbell*, 2012 IL App (1st) 112812, ¶ 21; *Ruby*, 2012 IL App (1st) 103210, ¶ 13. We review a trial court's order grant of summary judgment *de novo*. *Martin v. Layman*, 2025 IL App (4th) 240278, ¶ 137.

¶ 23 The parties raise two issues on appeal. First, the parties dispute who bore the burden of proof. Second, the parties dispute whether the bequest to CILDEF in Joann's will was adeemed.

¶ 24 A. Burden of Proof

¶ 25 First, we address the burden of proof. Generally, "[a] party bringing a claim against an estate bears the burden of proving that claim by a preponderance of the evidence." *In re Estate of Bozarth*, 2014 IL App (4th) 130309, ¶ 30. Here, CILDEF is the party asserting a claim, and it bears the burden of proving that claim.

¶ 26 According to CILDEF, it satisfied its burden of proving its claim through the undisputed evidence that Joann left the Parcel to it in Article 3 of her will. CILDEF argues that the party asserting ademption bears the burden of proving that a bequest was adeemed. CILDEF therefore contends that Shelton bore the burden of proving ademption.

¶ 27 CILDEF cites three cases in support of this contention; *Richardson v. Eveland*, 126 Ill. 37 (1888), *In re Estate of Pohn*, 67 Ill. App. 2d 227 (1966), and *Koulogeorge*. However, none of these cases support CILDEF's argument.

¶ 28 In *Richardson*, the testator executed a will leaving certain real estate to his son,

the plaintiff, with a condition that the son give $5,000 to the testator's daughters jointly. *Richardson*, 126 Ill. at 39. Before the testator died, he sold a portion of the land left to his son in the will to a third party, and he used the proceeds from that sale to give each of his daughters $2,500. *Id.* at 41. He also sold land to his son, including a portion of the land he left to his son in the will. *Id.* Finally, also while still alive, he gave his son real estate as a gift, including both real estate that the son was to inherit under the will and additional real estate. *Id.* at 39, 46.

¶ 29 After the testator's death, the son claimed that the $5,000 gift to the daughters in the will was adeemed by the testator's cash gift during his lifetime. *Id.* at 42. The supreme court disagreed. First, it explained that, if a will leaves property to a "stranger," the testator's subsequent gift to that stranger during the testator's lifetime does not adeem the bequest in the will, unless the testator expressly states this intention. *Id.* at 43. However, "[i]f the relation of the donor be that of parent, the presumption at once arises that the subsequent gift, if *ejusdem generis*, was intended to be in satisfaction of the prior legacy." *Id.* The court reasoned that a parent has an equal duty to all his children, and once a parent sets out his obligations to his children in his will, he would, presumably, not benefit only one of his heirs by giving that heir property at the expense of the general estate. *Id.* There was, therefore, a presumption that the bequest was adeemed when the testator gave a gift to a child while still alive. *Id.* at 43-44.

¶ 30 However, the supreme court found that this presumption was rebutted by the evidence in that case. *Id.* at 46-47. In total, the testator, while he was still living, gave to his son 100 acres more land than he would have inherited under the will. *Id.* at 46. The general presumption in favor of ademption was meant to avoid giving any one child a double inheritance. In *Richardson*, applying that presumption would leave the son receiving the real estate plus the additional $5,000. Because this would subvert the purpose of the rule, the court found it was "not

unreasonable, in view of the facts, that the charge in favor of the daughters should be retained." *Id.*

¶ 31 The *Richardson* court never announced that the burden of proof is uniformly on the party seeking ademption. Indeed, in that case, there was a rebuttable presumption in favor of ademption, at least for gifts to children, and the party opposing ademption bore the burden of rebutting that presumption.

¶ 32 CILDEF does not elaborate on its reliance on *Richardson*, and it cites no specific quote or even page number in *Richardson*. Perhaps CILDEF relies on *Richardson*'s finding that a testator's gift to a stranger while still living does not adeem a bequest unless the testator expresses this intention. *Id.* at 43. If so, this finding does not support CILDEF's claim. The *Richardson* court considered whether the testator's *gift* to the same "stranger" set to inherit under the will adeemed the legacy. *Id.* It did not discuss how a testator's *sale* of property to a third party affects the burden of proof for ademption of a gift to a "stranger," such as CILDEF here. *Richardson*'s reasoning would apply here only if Joann gave a gift to CILDEF during her lifetime. Then, the party seeking ademption of the gift to CILDEF would bear the burden of showing Joann's intent to adeem. But that is not this case.

¶ 33 Similarly, *Pohn* does not support CILDEF's claim. There, a doctor filed a claim against the decedent's estate for medical bills the decedent had incurred during his lifetime. *Pohn*, 67 Ill. App. 2d at 228-29. The estate's administrator responded that the doctor had already been paid for his services. *Id.* at 229. The trial court ordered the estate to pay the doctor $2,800. *Id.* The administrator appealed, and the appellate court affirmed. The administrator first argued that as the claimant, the doctor bore the burden of proving his claim beyond a reasonable doubt. *Id.* at 232. The appellate court rejected this argument, finding the claimant bore the burden of

proving a contract or debt against an estate by a preponderance of the evidence. *Id.* at 232-33 (citing *Floyd v. Estate of Smith*, 320 Ill. App. 171, 172 (1943)). However, the court found that the party claiming that the bill was paid bore the burden of proving payment. *Id.* at 233. The appellate court agreed with the trial court that the administrator failed to prove that the decedent's debts to the doctor had been paid. *Id.* at 233-34.

¶ 34 *Pohn* is simply not relevant. That case concerned proof of payment of a debt, not ademption. The testator in *Pohn* left no gift to the doctor, and the testator's intent was irrelevant.

¶ 35 Finally, in *Koulogeorge*, the testator, Charles Walgreen, established a trust during his lifetime and executed a document directing how he wanted to distribute his shares in Walgreen Co., including 10,000 shares designated to the Rotary Foundations. *Koulogeorge*, 2012 IL App (1st) 112812, ¶ 4. Before his death, the testator gave the Rotary Foundations the same number of shares they were set to inherit under the testator's trust and will. *Id.* ¶ 6. After his death, the testator's children and heirs filed a claim, asserting that the testator's gift of shares during his lifetime adeemed the bequest in the will and trust. *Id.* ¶ 11.

¶ 36 After concluding that the doctrine of ademption applies to trusts, the appellate court found that the Walgreen children failed to prove ademption. *Id.* ¶¶ 26-28. The court reasoned that in certain written communications, this testator clearly stated when he intended to adeem a bequest, and he made no such statements for the bequests to the Rotary Foundations. *Id.* ¶ 32. Based on the testator's clear and explicit statements for other gifts, the court explained, "had Walgreen intended to adeem his bequest to the Rotary Foundations, we conclude the Walgreen Beneficiaries would have been able to present this court with some direct evidence of that intention during discovery." *Id.*

¶ 37 *Koulogeorge* did not state that, in all cases, the party asserting ademption bore the

burden of proof. Instead, the court viewed the undisputed facts and found that, under those facts, this testator stated when he intended a gift given while alive to adeem a bequest in his will. Because no such statement appeared in the record for the particular bequest the Walgreen children challenged, the court found they failed to prove their case. That is, the court's reasoning was based on its understanding of the particular intentions and habits of that testator, not a general rule of Illinois law regarding the burden of proving ademption. Alternatively, even if the Walgreen children bore the burden of proof, it could have been under the general rule that the party asserting a claim against the estate bears the burden of proof. See *Bozarth,* 2014 IL App (4th) 130309, ¶ 30. Regardless, *Koulogeorge* did not analyze the burden of proving ademption, and it does not establish that the party asserting ademption bears the burden of proof.

¶ 38 Ultimately, none of CILDEF's cited authorities support its claim that any party asserting ademption necessarily bears the burden of proof. Instead, because CILDEF has cited no valid authorities to the contrary, we resort to the general rule that the party asserting the claim against the estate bears the burden of proof. See *id.* Here, CILDEF asserted a claim against the estate. Therefore, CILDEF bore the burden of proving that claim, including proving that Joann's bequest in Article 3 of her will was not adeemed.

¶ 39 B. Ademption

¶ 40 CILDEF contends that it properly asserted a claim under Article 3 of Joann's will. Shelton responds that the bequest of real estate was adeemed when the Parcel was sold. Ademption "is the extinction, alienation, withdrawal or satisfaction of the legacy or devise by some act of the testator by which an intention to revoke is indicated; the doing of some act with regard to the subject matter of the devise which interferes with the operation of the will." *Brady v. Paine,* 391 Ill. 596, 600-01 (1945). This doctrine applies to bequests of both real estate and

personal property. *Id.* at 601.

¶ 41 Illinois courts follow the "intent" approach to ademption, under which "a bequest is adeemed because the testator acted in a way indicating her intent to revoke the bequest." *Bollman v. Pehlman*, 352 Ill. App. 3d 1203, 1206 (2004) (citing *In re estate of Kolbinger*, 175 Ill. App. 3d 315, 324 (1988)). As the Illinois Supreme Court stated in *Brady*, "[t]he rule is well settled that if the testator, in his lifetime, disposes of property specifically devised by him, this will operate as a revocation of the devise." *Brady*, 391 Ill. at 601. Beyond such a clear, archetypal example, however, if "the specifically devised property is absent from the estate, Illinois courts have been willing to inquire into why, in search of evidence of the testator's intent." *Bollman*, 352 Ill. App. 3d at 1206; *Kolbinger*, 175 Ill. App. 3d at 324. By contrast, Illinois courts have rejected the "identity theory," under which a gift is adeemed if the property is no longer part of the estate, and "the reasons for the presence or absence of the property are irrelevant." *Bollman*, 352 Ill. App. 3d at 1206.

¶ 42 *Kolbinger* is illustrative. There, the appellate court found that the testator's bequest of real estate in her will was not adeemed when the property was damaged by a fire. *Kolbinger*, 175 Ill. App. 3d at 324-25. The court reasoned, "In the instant case, however, the property in question was not in existence at [the testator's] death not because of some voluntary act on her part, but because of an involuntary event, the destruction of the improvements on the property by fire." *Id.* at 324. Therefore, the court found that the beneficiary of the bequest should inherit the value of the insurance proceeds from the loss of the property as a substitute for the bequest of the real estate. *Id.* at 325.

¶ 43 Similarly, we found no ademption in *Bollman*. There, a father and his son, the defendant, owned a business together. *Bollman*, 352 Ill. App. 3d at 1204. When the father died,

the business owed him over $250,000. *Id.* His will established a trust for the benefit of his wife, with the defendant as the trustee, and he left the debt his business owed him to that trust. *Id.* at 1204-05. About a year after the father died, the business paid off the debt to the trust, then closed. *Id.* at 1205. These funds were invested in the trust's Merrill Lynch account. *Id.* Later, the wife died, and the trust was terminated, as directed by the will. *Id.* On termination of the trust, the father's will directed the trustee to distribute any debts owed to him by his business to the defendant. *Id.* It also directed that the trust's assets should be divided between his two children—the plaintiff and the defendant. *Id.* The defendant, as trustee, distributed to himself $235,843 of the trust's $245,156.00 in assets. *Id.* The plaintiff filed an action for an accounting in the trial court. *Id.* The court found that the business and the related debt did not exist at the time of the termination of the trust. *Id.* Therefore, the court found the bequest was adeemed, and the trust's assets should be divided between the parties. *Id.*

¶ 44 On appeal, the defendant argued the trial court erred by finding that the bequest was adeemed. *Id.* at 1206. The appellate court agreed. After summarizing the "intent theory" of ademption, the court found ademption applicable to trusts, as well as wills. *Id.* at 1207. The court then reasoned,

> "If a testator's intentional act is required to revoke a specific bequest by ademption, we see no reason there should be a different rule when the property first passes to a testamentary trust. Where the testator has provided for a specific bequest on termination of the trust, and the trust no longer possesses the property because of the trustee's actions, it cannot be because the testator intended to revoke the bequest. In such a case, there can be no ademption." *Id.*

The court then concluded that the defendant's actions as the trustee did not undermine the

testator's intent, and that intent was for the defendant to receive the value of the debt. *Id.* Based on this intent, the court held that the defendant correctly distributed the trust's assets to himself. *Id.*; see *Hobin v. O'Donnell*, 115 Ill. App. 3d 940, 941 (1983) (finding no ademption of a devise of stocks if the stocks were sold before the decedent's death by someone other than the decedent and without her knowledge or approval); see also *Lewis v. Hill*, 387 Ill. 542 (1944) (finding no ademption of a devise of real estate where a court-appointed conservator over the incapacitated testator obtained a court order approving the sale of that real estate to fund the testator's care).

¶ 45 Here, CILDEF argues that, under Illinois's "intent" approach to ademption, Joann's bequest of the Article 3 Parcel to CILDEF was not adeemed. Article 3 of Joann's will stated her intention that CILDEF inherit the Article 3 Parcel. CILDEF contends that no contrary evidence refutes this intention. CILDEF insists that the sale of the Article 3 Parcel is not evidence of Joann's intent to adeem the bequest because Joann's POA for property, Mark, effectuated the sale of property, rather than Joann herself. CILDEF does not contest Mark's authority to sell the parcel under the POA. CILDEF also does not challenge Joann's competency at any point before her death. However, CILDEF asserts that Mark's sale of the property on Joann's behalf is not sufficient to show Joann's intent to remove the property from the estate. According to CILDEF, like the conservator in *Lewis*, the trustee in *Bollman*, or the unauthorized seller in *Hobin*, Joann's POA could not adeem the bequest for Joann, as only Joann could demonstrate this intent.

¶ 46 The question, then, is whether this case is more like a testator disposing of property herself, as referenced in *Brady*, or more like *Bollman*, *Lewis*, or *Hobin*.

¶ 47 Of course, this case does not easily fit any of these scenarios. In contrast to the clear statement in *Brady*, Joann did not sign the contract for the sale of the Article 3 Parcel

herself. Nor did she sign the warranty deed or quitclaim deed associated with the conveyance of the parcel. Instead, her POA, Mark, signed all these documents on her behalf.

¶ 48 Conversely, *Bollman*, *Lewis*, and *Hobin* do not neatly apply to this case. *Hobin* involved an unknown person selling the property without the testator's permission or even knowledge. Here, as Joann's lawfully appointed POA, Mark acted with Joann's permission when selling the Article 3 Parcel. Relatedly, the relationship between the incompetent ward and her court-appointed conservator in *Lewis* is not equivalent to the current case. Joann remained competent, and she had the ability to form testamentary intent, unlike the incompetent ward. Furthermore, Mark was her chosen agent and had legal authority to sell property on her behalf. Finally, *Bollman* also is distinguishable. There, the testator was already deceased when the trustee invested the business debt funds in the Merrill Lynch account. Here, Joann was still alive and competent when Mark sold the Article 3 Parcel, and no party disputes that she retained competency for some time thereafter.

¶ 49 We are aware of no prior authority strictly governing the facts of this case. Nevertheless, we agree with the trial court that Joann's bequest to CILDEF was adeemed by the sale of the property. Under Illinois law, it is clear that when a testator sells property, a bequest of that property in the testator's will is adeemed. See *Brady*, 391 Ill. at 601; see also *Lewis*, 387 Ill. at 545 ("There is no doubt that had the testatrix herself, not being incompetent, sold the property specifically devised, the subject matter of the devise would have been withdrawn from the operation of the will and the devise would have no claim to the proceeds of such sale."). Undeniably, if Joann signed the sale documents herself, her bequest to CILDEF would be adeemed.

¶ 50 Here, although Mark signed the sale documents, he acted with Joann's permission

and approval. Indeed, Joann intentionally appointed Mark as her POA for the purpose of exercising authority over her property, including real estate transactions. Joann's POA specifically invoked section 3-4 of the Illinois Power of Attorney Act (Act) as defining Mark's authority, and it stated that the form should be construed pursuant to that statutory provision. See 755 ILCS 45/3-4 (West 2022). Consistent with the statutory form provided in the Act, Joann's POA authorized Mark "to act for [her] and in [her] name (in any way [she] could act in person)" with respect to real estate transactions. Although Mark's signature is on the sale documents, Mark acted in Joann's place. But if we impute Mark's action to Joann, then the sale of the property is attributed to Joann, and the bequest is adeemed.

¶ 51 Certainly, if Joann lacked competency, we would reach a different conclusion. Illinois courts have found that actions taken on behalf of incompetent principals do not adeem bequests. See *Lewis*, 387 Ill. at 546 ("Conveyances by conservators are, in no sense, to be regarded as conveyances by the lunatic. They are conveyances made by the law and are analogous to conveyances by guardians and administrators."); see also *Hobin*, 115 Ill. App. at 943 ("If someone other than the decedent sold the stock without permission or if the decedent was incapable of forming the requisite intent, then there was no ademption.") In these cases, there would be no reason to mention the testator's competency unless competency were a relevant consideration. In contrast to these cases, here, an agent acted for a competent principal with the agent's authorization. Therefore, we find the agent's disposal of property reflects the principal's intent, at least where there is no evidence to the contrary.

¶ 52 CILDEF asserts that even if Joann intended that her agent sell the property, this is not sufficient to show an intent to change her estate plan. Instead, CILDEF contends that whenever someone other than the testator conveys property on the testator's behalf, that

conveyance does not adeem a bequest of that property in the testator's will.

¶ 53 We reject CILDEF's contention. When a testator intentionally disposes of real estate herself, no additional act is necessary to show intent to adeem. *Brady*, 391 Ill. at 601. Similar, we infer that if the testator intentionally disposes of real estate through an agent, that is still an act "with regard to the subject matter of the devise which interferes with the operation of the will." *Id.* If the testator intended to remove the property from the estate, then she intended to interfere with the operation of the estate, and she intended ademption, regardless of whether the sale was accomplished through an agent.

¶ 54 CILDEF further insists Mark's actions could not adeem the bequest because the POA form did not grant Mark the authority to change Joann's will. On the contrary, the POA obligated Mark to preserve Joann's estate plan, to the extent he knew it. We disagree. There is no evidence Mark knew of Joann's will when he acted as POA. CILDEF admits Mark did not know about the will. Furthermore, the evidence demonstrates Mark was not trying to change Joann's estate plan when he effectuated the sale of her property. He was trying to fund her long-term care. More importantly, this provision cannot mean that Mark lacked the authority to sell Joann's interest in real estate. The POA explicitly granted Mark the authority over real estate transactions. Mark's authority to conduct real estate transactions in Joann's place would be meaningless if he could not sell property simply because it was part of her estate, at least where he had no knowledge of Joann's 2010 will. As stated above, if Joann intended Mark to sell her real estate, we find this sufficient basis to conclude Joann intended to adeem the bequest.

¶ 55 Finally, although we find that CILDEF bore the burden of proof, we would reach the same conclusion based on this evidence even if Shelton bore the burden of proof. The parties agree that Mark acted as Joann's POA for property when he completed the sale documents on

her behalf. Based on the parties' representations, Joann was competent when she appointed Mark. These facts provide the basis for our decision, and they are undisputed. Therefore, regardless of who bore the burden of proof, the only conclusion the evidence allows is that Joann's gift of the Parcel to CILDEF was adeemed. As such, CILDEF's claim fails as a matter of law.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment.

¶ 58 Affirmed.