

NOTICE

Decision filed 10/21/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250892-U

NO. 5-25-0892

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> ESTATE OF GARY P. HANKS, Deceased	)	Appeal from the
	)	Circuit Court of
(Aaron Booher,	)	Champaign County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 25-PR-46
	)	
Ana Maria Hanks,	)	Honorable
	)	Chad S. Beckett,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Vaughan and Clarke concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying the respondent’s motion to dismiss the petition for letters of administration with will annexed where the respondent had previously invoked the same will in a California probate proceeding to obtain the California real property devised to her. The respondent’s challenge was not merely a request for formal proof of the will, and neither recognized exception to the acceptance-of-benefits rule applies.

¶ 2 I. BACKGROUND

¶ 3 Gary P. Hanks (Gary) formerly resided in Illinois and later moved to California. In 1978, he purchased a residence in Bellflower, California. On April 17, 1987, Gary prepared and signed a handwritten document entitled a holographic will. The document begins: “This is a holographic handwritten will recognized by the state of California.”

¶ 4 Of particular relevance here, Gary divided his property geographically. He devised his “entire estate, real and personal,” located in California to Ana Maria Garduno, now Ana Maria Hanks (Ana), provided that she survived him for 30 days. Gary devised his property located outside California, including property in Illinois, to his longtime friend Aaron Booher (Booher), subject to the same survivorship condition.

¶ 5 Gary and Ana married in 1997. Gary died in California in May 2021 while still married to Ana. At his death, Gary owned the Bellflower residence and also held an interest in farmland located near St. Joseph, Illinois.

¶ 6 In 2023, Ana commenced a spousal property proceeding in the Superior Court of California, County of Los Angeles. Ana attached Gary’s handwritten will to her petition. In an attachment submitted in support of the petition, Ana represented: “The decedent executed a holographic Will which has been lodged with this Court and was written in the decedent’s hand and signed on April 17, 1987.” Ana then quoted the provision devising Gary’s California property to her and asserted: “Thus, pursuant to the decedent’s Will, Petitioner herein asserts that she should be entitled to this property without administration pursuant to California Probate Code Section 13500.” The California court thereafter found Gary to have died testate, found Ana to be his surviving spouse, and ordered that the Bellflower property pass to Ana without administration.

¶ 7 In February 2025 Booher filed in the circuit court of Champaign County a petition for letters of administration with will annexed. Booher sought administration of Gary’s estate in Illinois, where Gary owned the farmland devised to Booher under the will. Ana moved to dismiss Booher’s petition pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2022)). Among other arguments, Ana maintained that Gary’s handwritten will could not be admitted to probate in Illinois because it did not comply with Illinois requirements for execution

of a domestic will, the place where Gary executed the document was unknown, and Booher could not establish that Gary was domiciled in California when he executed it. Booher responded that Ana had affirmatively relied upon the same will in California to obtain Gary’s California property and could not now deny the will’s validity when Booher sought the Illinois property devised to him.

¶ 8 Following argument, the circuit court denied Ana’s motion. In addressing Ana’s inconsistent treatment of the instrument, the court stated: “It’s just—it’s not equitable for this court to say she did stand the benefit of the will for this one paragraph, but she gets to challenge it for the other one. And it’s—that’s just not tenable in this court.” The court appointed Booher administrator with the will annexed. Ana moved to reconsider. The circuit court again emphasized Ana’s use of the will in California, explaining that she had “availed herself of the provisions of this document in California court” and had “received the benefits of that will as it would be applied under California law.” The court denied reconsideration. Ana timely appealed.

¶ 9 II. ANALYSIS

¶ 10 Ana contends that the circuit court erred in denying her motion to dismiss and her subsequent motion to reconsider. She principally argues that Booher failed to establish a statutory basis under article VII of the Probate Act of 1975 (Probate Act) (755 ILCS 5/7-1 *et seq.* (West 2024)) for admitting Gary’s holographic will in Illinois. She further maintains that her use of the instrument in California cannot preclude her from challenging its admission here.

¶ 11 We review a ruling on a section 2-619 motion *de novo*. *In re Estate of Boyar*, 2013 IL 113655, ¶ 27. A section 2-619 motion admits the legal sufficiency of the opposing pleading but asserts an affirmative matter that defeats or avoids its legal effect. *Id.* Because Ana’s motion to reconsider alleged errors in the circuit court’s application of existing law rather than newly

discovered evidence or a new legal theory, our review of that ruling is likewise *de novo*. See *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16.

¶ 12 The admission of a will to probate is governed by statute. *In re Estate of Huang*, 2022 IL App (2d) 210269, ¶ 7. Illinois law favors admission of a will to probate, and when the statutory requirements are satisfied, the court is required to admit the instrument. *Id.* ¶ 6. Section 7-1 governs foreign wills. It provides that a will signed by the testator may be admitted to probate in Illinois when the will has previously been admitted to probate outside this State or when it “was executed outside of this State in accordance with the law of this State, of the place where executed or of the testator’s domicile at the time of its execution.” 755 ILCS 5/7-1 (West 2024).

¶ 13 The parties devote considerable attention to where Gary executed his handwritten will and whether California or Illinois was his domicile in 1987. We need not resolve those questions to decide this appeal. Established principles of appellate review counsel against deciding questions unnecessary to the disposition of the cause. *Boyar*, 2013 IL 113655, ¶ 32. Ana’s own use of Gary’s will in the California proceeding resolves the issue presented by her motion.

¶ 14 A. Acceptance of Benefits Under a Will

¶ 15 Illinois has long recognized that a beneficiary who accepts the benefits of a testamentary instrument generally may not thereafter repudiate the instrument when its remaining provisions operate to the beneficiary’s disadvantage. In *Kyker v. Kyker*, 117 Ill. App. 3d 547, 551 (1983), the court explained that “any person who voluntarily accepts a beneficial interest under a will is held thereby to ratify and confirm the entirety of the will which conferred the benefit.” Thus, “the beneficiary may not accept a bequest of the testator and at the same time set up any right or claim which would defeat or prevent the full operation of the will.” *Id.*

¶ 16 The supreme court subsequently discussed the related doctrine of election in *Boyar*. When a beneficiary is presented with inconsistent or alternative claims to property and elects to accept benefits pursuant to a will, that beneficiary normally may not then challenge the will or a provision of it. *Boyar*, 2013 IL 113655, ¶ 31. The rule reflects two equitable concerns: honoring the testator’s intended disposition of property and protecting the rights of the other persons who stand to benefit under the testamentary instrument. *Id.*

¶ 17 *Boyar* additionally recognized a broader equitable principle, separate from the technical doctrine of election: “once one accepts some benefit, one cannot then challenge the validity of the thing by which the benefit was conferred.” *Id.* ¶ 40. The principle rests upon “logic, fairness and consistency.” *Id.* As the supreme court observed, “[u]nless you acknowledge that a decree, statute, contract, etc., is valid, then by what right can you claim the benefit you accepted under its terms?” *Id.*

¶ 18 This case presents the circumstance absent in *Boyar*. There, the beneficiary accepted personal property pursuant to a trust but challenged only an unrelated amendment governing the identity of the trustee. *Id.* ¶¶ 39-41. His challenge therefore did not threaten the substantive disposition under which he had accepted property or impair another beneficiary’s right to take. *Id.* Here, by contrast, Ana invoked the substantive dispositive terms of Gary’s will to obtain the California property devised to her and now attacks the same instrument in a manner that, if successful, would prevent the dispositive provision benefiting Booher from operating.

¶ 19 Ana’s representations to the California court were not equivocal. She did not merely disclose that a handwritten document existed. She represented that Gary “executed a holographic Will,” quoted the provision devising the California property to her, and expressly asserted that, “pursuant to the decedent’s Will,” she was entitled to that property without administration. The

California court found Gary testate and entered an order providing that the California property pass to Ana without administration.

¶ 20 Ana now takes the opposite position toward the same instrument. She asks the Illinois courts to hold that the instrument cannot operate as Gary's will so that the provision devising the Illinois property to Booher cannot be given effect. The circuit court correctly rejected that position. Ana cannot invoke the will when its California provision benefits her and repudiate the same will when its Illinois provision benefits Booher. See *Kyker*, 117 Ill. App. 3d at 551; *Boyar*, 2013 IL 113655, ¶¶ 31, 40.

¶ 21 B. Ana's Reliance on *Levin*

¶ 22 Ana relies on *In re Estate of Levin*, 135 Ill. App. 3d 866 (1985), for the proposition that a beneficiary who has accepted a testamentary benefit is not barred from requiring statutory proof of the will. We agree with that proposition but conclude that *Levin* does not control the present case.

¶ 23 In *Levin*, a beneficiary who had accepted a bequest requested formal proof of an already-admitted will under section 6-21 of the Probate Act. See 755 ILCS 5/6-21 (West 2024); *Levin*, 135 Ill. App. 3d at 870-71. The appellate court rejected the contention that acceptance of the bequest barred the beneficiary from requesting formal proof. The court emphasized that the Probate Act creates separate proceedings for formal proof of a will and for a will contest, and that a request for formal proof is not itself a challenge to the will's validity. *Id.* at 871. The beneficiary therefore could demand formal proof despite having accepted the bequest, although she was estopped from later bringing a will contest attacking the instrument's validity. *Id.*

¶ 24 Ana is not merely requesting formal proof of Gary's will. Nor has she invoked section 6-21. She seeks dismissal of Booher's petition on the affirmative ground that Gary's holographic

instrument is invalid and cannot be admitted as his will in Illinois. Her requested relief would prevent the instrument—and specifically the devise to Booher—from operating at all. *Levin* expressly distinguished such an attack on validity from a limited demand for formal statutory proof. *Id.* Accordingly, *Levin* does not permit Ana to obtain property by affirmatively invoking Gary’s will in one proceeding and thereafter defeat the will’s substantive disposition to another beneficiary in a separate proceeding.

¶ 25 C. Exceptions to the Acceptance-of-Benefits Rule

¶ 26 Ana alternatively relies on the recognized exceptions described in *Kyker*. Acceptance of a testamentary benefit will not preclude a later challenge when the acceptance was made without full knowledge of the relevant facts and circumstances, including the contents of the will and the circumstances surrounding its execution, or when the challenged provision is contrary to law or public policy. *Kyker*, 117 Ill. App. 3d at 551-52; see also *Boyar*, 2013 IL 113655, ¶ 32. Neither exception changes the result here.

¶ 27 First, the record establishes that when Ana invoked the will in California she possessed the instrument and knew its material terms. Her California filing quoted the dispositive provision upon which she relied and affirmatively represented that Gary had executed the holographic will. She was therefore fully aware that the instrument was handwritten, signed in 1987, and contained the geographically divided dispositions now at issue.

¶ 28 Ana emphasizes that she did not know where Gary physically executed the document or all of the circumstances surrounding its execution. But she identifies no subsequently discovered fact concerning execution that prompted her present position. The uncertainty upon which she now relies existed when she affirmatively invoked the will in California. The exception recognized in *Boyar* protects a beneficiary who elects without knowledge of material facts and later asserts rights

after becoming cognizant of those facts. *Boyar*, 2013 IL 113655, ¶ 32. Ana has identified no such newly acquired factual knowledge. Her position changed; the underlying facts did not.

¶ 29 Second, Ana contends that an unwitnessed holographic will is contrary to Illinois law and public policy because a domestic Illinois will ordinarily must satisfy Illinois witnessing requirements. That argument overlooks article VII of the Probate Act. The legislature has expressly provided for admission in Illinois of a will executed outside this State when the instrument complies with the law of Illinois, the place of execution, or the testator's domicile at execution. 755 ILCS 5/7-1 (West 2024). Thus, a testamentary instrument is not contrary to Illinois public policy merely because it would not satisfy the requirements applicable to a will executed in Illinois. See *Huang*, 2022 IL App (2d) 210269, ¶¶ 7, 10.

¶ 30 Ana's public-policy argument therefore does not bring her within the second *Kyker* exception. Whether Gary's will ultimately derives its foreign validity from the law of the place of execution or the law of his domicile is not necessary to our resolution of Ana's present challenge. What matters here is that Illinois law itself recognizes foreign wills and provides a statutory means for their admission. Ana cannot characterize the very category of testamentary instrument contemplated by article VII as inherently contrary to Illinois public policy.

¶ 31 D. The Circuit Court's Ruling

¶ 32 At the hearing on Ana's motion to reconsider, the circuit court stated that "it would be fundamentally unfair" for Ana to receive the benefit of Gary's will in California and then argue in Illinois that the same instrument was invalid. Although the parties and the circuit court at times described the applicable doctrine as "equitable estoppel," the label is not dispositive. We review the judgment, not the circuit court's reasoning, and may affirm on any basis supported by the record. See *Keck v. Keck*, 56 Ill. 2d 508, 514 (1974).

¶ 33 The record supports affirmance under the acceptance-of-benefits principles recognized in *Kyker* and *Boyar*. Ana affirmatively invoked Gary’s will, relied upon its dispositive language, and obtained the California property in the proceeding she commenced. She may not thereafter repudiate the same testamentary instrument to prevent Booher from receiving the property Gary devised to him.

¶ 34 Because that issue resolves the appeal, we express no opinion on whether the record independently establishes the precise location where Gary executed his will or his domicile on April 17, 1987. Nor do we rely on judicial estoppel. Those questions are unnecessary to our disposition. The circuit court therefore did not err in denying Ana’s section 2-619 motion to dismiss. For the same reasons, Ana has established no error in the denial of her motion to reconsider.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Champaign County is affirmed.

¶ 37 Affirmed.