[J-8-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

BAER, C.J., TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

IN RE: ESTATE OF CALEEM L. JABBOUR, DECEASED	:	No. 13 WAP 2021
	:	Appeal from the Order of the Superior Court entered
APPEAL OF: MAURA NICOTRA, CO-EXECUTRIX	:	December 30, 2020 at No. 1275 WDA 2019, affirming the Order of the Court of Common Pleas of Allegheny County entered July 24, 2019 at No. 02-15-01692.
	:	ARGUED: March 9, 2022

OPINION

JUSTICE WECHT DECIDED: JUNE 22, 2022

Pennsylvania's Probate, Estates and Fiduciaries Code ("PEF Code" or "the Code")[1] protects a surviving spouse against disinheritance or omission from his or her late spouse's will. Specifically, Section 2203 of the Code establishes a surviving spouse's "right of election," which entitles the surviving spouse to the "elective share,"[2] a one-third allotment of enumerated categories of the deceased spouse's property.[3]

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[1] Act of June 30, 1972, Pub.L. 508, No. 164, 20 Pa.C.S. §§ 101–8815.

[2] The term "elective share" is synonymous with the terms "forced share, statutory share, [and] statutory forced share." *Elective Share*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[3] 20 Pa.C.S. § 2203(a). In addition to the right of election, the PEF Code also contains a protection afforded only to a surviving spouse who married the decedent after the operative will was executed and thus was not included in the will. Specifically, Subsection 2507(3) of the Code entitles the excluded spouse to the share of the estate that he or she would have received had the decedent died without a will. *See id*. § 2507(3).

Section 2210 of the Code prescribes procedures that surviving spouses seeking to take against a will—that is, to forego their inheritance as defined by the will, if any, in favor of the elective share—must follow:

> **(a) How election made.**--A surviving spouse's election to take or not to take his elective share shall be by a writing signed by him and filed with the clerk of the orphans' court division of the county where the decedent died domiciled. Notice of the election shall be given to the decedent's personal representative, if any.
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> **(b) Time limit.**--The election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later. The court may extend the time for election for such period and upon such terms and conditions as the court shall deem proper under the circumstances on application of the surviving spouse filed with the clerk within the foregoing time limit. Failure to file an election in the manner and within the time limit set forth in this section shall be deemed a waiver of the right of election.
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> **(c) Costs.**--The costs of filing and recording the election shall be reimbursed out of the estate as a part of the administration expenses.[4]

The instant dispute revolves around the six-month time limit set forth in Subsection 2210(b). The surviving spouse here timely filed her election to take against the will,[5] but, several years later, petitioned to revoke her election in an attempt to reclaim her testate share. The parties dispute whether a survivor who seeks to revoke a statutory election against the will must do so within the six-month period specified in Subsection 2210(b), even though it speaks only to the time for filing the election, not to the revocation of a

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[4] 20 Pa.C.S. §§ 2210(a)-(c).

[5] Our use of the phrase "an election against the will," throughout this Opinion may seem unnecessarily cumbersome or redundant. But the qualification is important. Subsection 2210(a) references the survivor's "election to take *or* not to take his elective share." *Id*. § 2210(a) (emphasis added). To reflect the two types of elections mentioned in the statute, we use the phrase "against the will" when discussing the survivor's choice to pursue the elective share and "under the will" in reference to the survivor's choice to accept the share provided in the will.

prior election. We conclude that the widow here was not permitted to revoke her election after the expiration of Section 2210's six-month time limit.

I. Background

In 1995, Caleem L. Jabbour ("Caleem") married Arlene Jabbour ("Arlene"). Caleem and Arlene each had three children from prior marriages. On November 25, 1998, Caleem and Arlene executed a joint and mutual will. The 1998 will named Arlene as the sole heir of the residue of Caleem's probate assets (and vice-versa). It also designated two co-executrices and two alternative co-executrices. Caleem's daughter, Renee Jabbour ("Renee"), and Arlene's daughter, Terri Vargo ("Terri"), were to serve as co-executrices. If Renee or Terri became unavailable to serve, they would be replaced, respectively, by Caleem's daughter, Maura Nicotra ("Maura"), and/or Arlene's daughter, Tracy Riley.

On December 22, 2014, Caleem died testate. On April 16, 2015, the orphans' court admitted his will to probate and issued letters testamentary to Terri and Maura, the latter being appointed as co-executrix because Renee predeceased Caleem. At the time of his death, Caleem had numerous bank accounts, some of which were subject to the terms of his will, and thus to the jurisdiction of the probate court. However, several accounts were nonprobate assets—*i.e*., "property that passes to a named beneficiary upon the owner's death according to the terms of some contract or arrangement other than a will."[6]

On July 18, 2015, Arlene filed an election to take against Caleem's will. Unlike a testate share, which by definition only accounts for property passing under a will, the elective share under Section 2303 includes certain nonprobate assets. Section 2303

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6 *Nonprobate Asset*, BLACK'S LAW DICTIONARY (11th ed. 2019).

includes those assets in the elective share in order to prevent one spouse from depriving the other of what the legislature has determined to be a reasonable share by, for example, naming one's spouse as the sole testate beneficiary while placing all of one's assets in accounts that transfer upon death to a beneficiary other than the surviving spouse.[7]

On January 15, 2019, Arlene filed a petition to revoke her earlier spousal election against the will, seeking to reclaim her testamentary share of Caleem's estate.[8] Arlene claimed that she filed the election because she was unaware of the full extent and value of Caleem's nonprobate assets. She sought revocation once she acquired a "sufficient understanding" as to the comparative values of Caleem's probate and nonprobate assets. Arlene's Pet. for Citation and Rule to Show Cause, 1/15/2019, ¶ 12c. Arlene contended

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[7] *See In re Neamand's Est*., 318 A.2d 730, 735-36 (Pa. 1974) ("The elective share was established by the Legislature to ensure that a surviving spouse had the option of choosing a legislatively-determined reasonable share, if there was either no or inadequate provision for him or her in the deceased spouse's will.")

[8] It appears that litigation concerning two collateral issues at least in part delayed the progression of this case for approximately three years. First, Maura filed a petition for citation challenging Arlene's use of a power of attorney that Caleem had granted to Arlene after he suffered a stroke. Maura requested that Arlene reimburse the estate for the full balance of one of Caleem's savings accounts, from which Arlene had withdrawn funds that she deposited into her own account. The orphans' court denied the motion. Maura appealed and the Superior Court affirmed, stating, "Decedent authorized the closing of the account and transfer of funds or ratified Arlene's use of the [power of attorney] for that purpose." *In re Est. of Jabbour*, 1952 WDA 2016, 2018 WL 3434231, at *6 (Pa. Super. July 17, 2018) (memorandum).

The second collateral matter related to a petition for citation filed by Terri and Arlene, who alleged that Maura and others removed assets from Caleem's accounting business. Terri and Arlene sought reimbursement to the estate for assets Maura, *et al*., allegedly sold. The orphan's court dismissed the citation, finding no evidence of misappropriation or conversion. Terri and Arlene appealed. The Superior Court affirmed. *See In re Est. of Jabbour*, 75 WDA 2017, 2018 WL 3433834, at *8 (Pa. Super. July 17, 2018) (memorandum).

that Pennsylvania Rule of Orphans' Court Procedure 5.4 permitted her to revoke the election at any time.[9] *Id*. ¶ 13.

While Arlene's daughter Terri consented to the revocation, Caleem's daughter Maura opposed it. Maura argued that Arlene's revocation petition was untimely. Even if the petition were timely, Maura argued, Arlene failed to meet the burden of proof required to revoke an election. She argued that Arlene was required to demonstrate "that she lacked sufficient information about the nonprobate assets of Decedent's estate passing to other heirs[,]" but failed to do so. Maura's Tr. Br., 6/19/19, at 10.

On June 6, 2019, the orphans' court held a hearing on Arlene's petition to revoke her election. The parties principally disputed Arlene's knowledge of the extent and value of Caleem's probate and nonprobate assets when she filed her election.

Arlene, the only one who testified at the hearing, contended that, at the time of her election, she was aware of a document that Caleem created, which detailed various accounts that he owned. *See* Notes of Testimony ("N.T."), 6/6/19, at 26, 30-44. She explained that she discovered the document shortly after Caleem's death, when she searched his office for her birth certificate and for the couple's marriage certificate. *Id*. at 26. She said the office appeared to have been "wiped out." *Id*. She stated that the only thing she found in the office was the document, entitled "C.L. Jabbour CD Schedule 2013." *Id*. at 30. This "ledger" listed the "amounts," "maturity dates," and "interest rates" of various assets, including certificates of deposit, IRA accounts, life insurance policies, and in-trust-for accounts. *Id*. at 46-49. Several of these accounts named Maura as the

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[9] Pa.R.O.C.P. 5.4, entitled "Revocation, Vacation or Extension of Time for Filing of Surviving Spouse's Election," does not specify whether a revocation petition must be filed within a certain period. Arlene asserted that the rule's silence indicated that a surviving spouse may revoke an election at any time. In relevant part, Rule 5.4 only lists the required contents of "a petition to revoke or vacate an election of a surviving spouse to take against the will." *See id*. 5.4(a)(1)-(9) (listing nine items that must be set forth in the petition).

beneficiary upon Caleem's death, while others listed Arlene as the beneficiary. *Id*. at 47, 80-81.

Arlene testified that she was uncertain as to whether the items listed on the ledger accounted for all of Caleem's assets. *Id*. at 75-76. She explained that the two did not discuss pecuniary matters during their marriage, and that Caleem was very secretive about his finances. *Id*. at 112-16, 131. According to Arlene, her discovery of the ledger roused her suspicion that Caleem had additional assets of which she was unaware. *Id*. at 123. She "felt" that some assets "were hidden from her," *id*. at 20, and believed that the ledger may have been "planted in" Caleem's office as a ruse to convince her that no assets existed beyond those specified on the ledger. *Id*. at 123. She thus elected against the will, she claimed, in order to "find out what assets [Caleem] had." *Id*. at 131. She decided to revoke her election after failing to confirm her suspicions. *See id*. at 78, 140–43.

At the end of the hearing, the orphans' court invited the parties to submit proposed findings of fact and conclusions of law, remarked that "this is the most convoluted piece of litigation I've ever been involved in in my life," and took the matter under advisement. *Id*. at 154; *see id.* at 153-54.

On July 24, 2019, the court entered an order granting Arlene's revocation petition. The court found that Arlene filed the election "out of an abundance of caution because she did not have sufficient information about [Caleem's] nonprobate assets, as her [h]usband was very secretive about his finances." Tr. Ct. Op., 7/24/19, at 2. Moreover, she was "entitled to revoke the [e]lection, now that she has full knowledge of the extent of [her husband's] estate." *Id*. Maura appealed.

In a unanimous opinion, the Superior Court affirmed. *In re Est. of Jabbour*, 244 A.3d 1254 (Pa. Super. 2020). Before that court, Maura argued that the orphans' court

erred in permitting Arlene to revoke the election because the revocation "petition was filed 3 years and 6 months after the statutory deadline." Maura's Super. Ct. Br. at 6. Maura contended that Arlene was required to comply with the timing requirement of Subsection 2210(b), which states that "[t]he election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later." 20 Pa.C.S. § 2210(b). She maintained that the orphans' court could overlook Arlene's purported noncompliance with the timing requirement only if Arlene demonstrated that fraud prevented her from apprehending her actual share under the will. "Arlene could not revoke the spousal election," Maura argued, because she "made it with full knowledge of the facts of the estate." *Jabbour*, 244 A.3d at 1258. The Superior Court disagreed.

First, the court observed that "no statute sets forth a deadline for revocation of a spousal election." *Id*. Subsection 2210(b) limits only the time in which the surviving spouse may elect against the will. The Superior Court then addressed Maura's reliance upon *In re Daub's Estate*, 157 A. 908 (Pa. 1931).[10] In that case, this Court held that a surviving spouse "ordinarily" must petition to revoke an election "within the statutory period" for taking the election, except "where actual fraud has been committed to obtain the widow's election, and no laches appears, for fraud vitiates everything it touches." *Daub's Est.*, 157 A. at 911.

While the issue in *Daub's Estate* was the timeliness of the revocation of an election to take *under the will*, the Superior Court took the position that the general rule announced in that case also applied to a petition to revoke an election *against the will*. Thus, all things being equal, Subsection 2210(b)'s six-month period constrained Arlene's petition to revoke the election against Caleem's will. Nevertheless, citing this Court's earlier

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[10] Hereinafter, we refer to this decision as "*Daub's Estate*" or simply "*Daub*."

decision in *In re McCutcheon's Estate*, 128 A. 843 (Pa. 1925), the Superior Court held that the six-month period "does not begin to run until the spouse has 'full knowledge of all essential facts.'" *Est. of Jabbour*, 244 A.3d at 1259 (quoting *McCutcheon's Est.*, 128 A. at 845).

According to the Superior Court, the *Daub* Court recognized this "tolling principle" but declined to apply it in that case because "the widow's long delay resulted in the loss of important evidence such that others were prejudiced." *Id*. Because the *Daub* Court considered prejudice, the Superior Court reasoned that laches,[11] not noncompliance with the putative statutory time limit, precluded the spouse from seeking equitable tolling of the revocation period based upon her incomplete knowledge. In short, the court below construed *Daub's Estate* as contemplating two equitable exceptions to the general time limitation: (1) a lack of sufficient knowledge and (2) fraud or duress. When one of those exceptions applies, a party opposing revocation for untimeliness must prove that the equitable doctrine of laches bars revocation.

Applying those principles to this case, the Superior Court found Arlene's revocation timely because she "did not have full knowledge of the essential facts when she made her spousal election. In the absence of such knowledge, she could not have balanced the alternative options intelligently." *Id.* The Superior Court also found no prejudice to other beneficiaries of Caleem's will, even though the period between Arlene's election

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[11] In *Weinberg v. Commonwealth Board of Examiners of Public Accountants*, 501 A.2d 239 (Pa. 1985), we explained the equitable doctrine of laches as follows:

> The application of the equitable doctrine of laches does not depend upon the fact that a definite time has elapsed since the cause of action accrued, but whether, under the circumstances of the particular case, the complaining party is guilty of want of due diligence in failing to institute his action to another's prejudice.

Id. at 242 (citations omitted).

and her revocation "was not short." *Id*. Because of its view that the time for Arlene to revoke her election was tolled for the period wherein she did not apprehend the true value of the estate, the Superior Court affirmed the trial court's order granting Arlene's petition to revoke her election.

Maura filed a petition for allowance of appeal, and we granted review to consider the following question:

> Should the decedent's spouse have been permitted to revoke her spousal election against the will when she did not allege or demonstrate active fraud, when she acted with willful blindness and did not exercise due diligence in revoking her election, and when her petition was filed more than three (3) years after the deadline imposed by this Court in *Daub's Estate*?

In re Est. of Jabbour, 257 A.3d 701, 702 (Pa. 2021) (*per curiam*) (cleaned up).

II. Discussion

A. Relevant Legal History

Law immemorial has protected a surviving spouse's right against total disinheritance by his or her deceased spouse. But it also generally has imposed temporal and procedural constraints upon a survivor's entitlement to those protections. Under English and early American common law, the doctrine of dower and curtesy established a surviving spouse's threshold entitlement to the deceased spouse's property.[12] By the early part of the twentieth century most states enacted elective-share statutes that replaced or were an alternative to the common-law remedies,[13] and Pennsylvania was a pioneer among them. As early as 1794, our General Assembly enacted laws entitling a

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[12] *See generally* Terry L. Turnipseed, *Why Shouldn't I Be Allowed to Leave My Property to Whomever I Choose at My Death? (or How I Learned to Stop Worrying and Start Loving the French)*, 44 BRANDEIS L.J. 737, 738-50 (2006).

[13] Martin D. Begleiter, *Grim Fairy Tales: Studies of Wicked Stepmothers, Poisoned Apples, and the Elective Share*, 78 ALB. L. REV. 521, 522-23 (2015).

surviving spouse to a statutorily determined share of the deceased spouse's estate that the survivor could choose in lieu of common-law dower.[14] Notably, our statutory law was not as quick to impose strict time constraints on a widow's ability to pursue the legislatively determined share. The common law filled the gaps, importing the standards bearing upon a surviving spouse's ability to pursue common-law dower to the context of the statutory share.

Bradford v. Kent, 43 Pa. 474 (1863) is illustrative of common-law procedures. There, we addressed the restrictions upon a surviving spouse's right to pursue dower—specifically, whether the survivor made a valid, binding election "to take a devise or a bequest under her husband's will, in lieu of dower at law." *Id*. at 484. Because the right was a creature of the common law, there were no filing requirements, no mandates to notify other heirs of the spouse's decision, and no other formalities restricting the spouse's legal entitlement. There, the court relied upon the surviving spouse's conduct in the wake of the testator-spouse's death to assess whether the survivor had made an "*in pais*" election, an out-of-court decision to pursue or forego the forced share.[15]

The *Bradford* Court explained that a survivor will be bound to an irrevocable *in pais* election to take under the will when two conditions are met. First, the survivor must have performed "unequivocal acts" demonstrating an "inten[t] to relinquish dower." *Id.* at 484. Typically, evidence that the survivor "claimed and received the legacy or devise made to her" through the will of her husband sufficed to establish this first condition. *Id.* at 485.

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[14] *See Galbraith v. Green*, 1824 WL 2463, at *7 (Pa. 1824) (explaining that "the act of the 19th of April 1794" gives a surviving wife "either one-third of the land [owned by her deceased husband] for her life, or in case the estate will not conveniently admit of this partition, the interest for life of one-third of the money at which the whole real estate should be valued").

[15] An act performed "*in pais*" is one that is "performed out of court." *Act (2)*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Second, the party seeking to preclude the survivor from securing dower had to prove that, when she performed those acts, she "knew the situation of her husband's estate, and the relative value of the properties between which she was empowered to choose." *Id*. at 484. If and only if the opposing party proved those conditions could the asserted *in pais* election preclude the widow from pursuing dower, even if she attempted to claim dower shortly after her spouse's death.

But the *Bradford* Court also clarified that the absence of one of those two conditions (such that no binding election occurred) does not excuse a long lapse in time between the deceased spouse's death and the widow's pursuit of dower. Recognizing the inequity that would result from allowing a widow to revoke her election and pursue dower when other heirs long had believed the share they had received was secure, the Court held "a lapse of time of more than five years after acts done, which are usually treated as indicating an election, will . . . be binding upon a widow, and prevent her denial of an election, *though the acts were done in ignorance of her rights*." *Id*. at 486 (emphasis added).[16]

The elective share, unlike dower, was created by positive law, but courts throughout the Commonwealth continued to employ *Bradford*'s equitable assessment in deciding whether a widow could pursue the statutory share. Courts resorted to the common law for two reasons. First, for some time there was no statutory requirement to file a written election declaring an intent to take under or against the will. So, *Bradford*'s approach continued to control when determining whether certain acts *in pais* proved a

[16] While *Bradford* and many of the other cases of its era addressed elections to take under, rather than against, the will, the standards for assessing the validity of an election to take under the will applied with equal force to an election to take against the will. *See Zimmerman v. Lebo*, 24 A. 1082, 1083 (Pa. 1892) ("An election is a choice between two or more things or lines of action by one who is entitled to all, and, when made, is as a general rule binding.").

binding election to forego the statutory share. *See, e.g.*, *Appeal of Anderson*, 36 Pa. 476, 491-97 (1860).

Second, the General Assembly had not specified a period within which the widow must pursue her elective share if she did not intend to take under will. Instead, early statutory procedures contemplated a situation where the widow was "called upon to elect," meaning someone (typically, the executor or another heir) compelled the widow to appear in court and make an on-the-record declaration as to whether she would take under the will or take against it. *See Appeal of Kreiser*, 69 Pa. 194, 200-03 (1871). We held that a widow could not be forced to decide until she knows "the relative values of the properties between which she was empowered to choose." *In re Woodburn's Est.*, 21 A. 16, 17 (Pa. 1891). And, because there was no statute of limitations, our decisional law filled the gap as to the time limitations on an election when no one called upon the widow to choose. So, for example, a surviving spouse could not seek the elective share if other beneficiaries had long believed the survivor had elected to take under the will. *See Cox v. Rogers*, 77 Pa. 160, 168 (1874); *see also Bradford*, 43 Pa. at 486.

By the early twentieth century, Pennsylvania statutory law provided both a period to elect and formal procedures for doing so.[17] New statutory requirements related to filing

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[17] For example, the Wills Act of June 7, 1917, in relevant part, provided the following procedural constraints:

> A surviving spouse electing to take under or against the will of the decedent, shall, in all cases, manifest the election by a writing signed by him or her, duly acknowledged before an officer authorized by law to take the acknowledgment of deeds, and delivered to the executor or administrator of the estate of such decedent within two years after the issuance of letters testamentary or of administration. Neglect or refusal or failure to deliver such writing within said period shall be deemed an election to take under the will.

In re Minnich's Est., 136 A. 236, 236-37 (Pa. 1927) (quoting Subsection 23(b) of the Wills Act of June 7, 1917).

and recording an election ended the need for judicial determinations of whether a surviving spouse's out-of-court conduct demonstrated a binding election. *See In re Beck's Est.*, 108 A. 261, 261-62 (Pa. 1919) (holding that the statutory "requirements as to execution, acknowledgment, and delivery are mandatory, and, as appellant's election to take under the will was neither acknowledged nor delivered to the executor, it was ineffective," despite the fact that "[u]nder prior statutes, containing no such provisions, . . . an election, even *in pais*, if advisedly made and clearly proven, was sufficient"). Similarly, the General Assembly's delineation of a statutory period alleviated courts of the burden of assessing case-by-case whether the time between the death and the survivor's election was so long that permitting the survivor to pursue the elective share would be inequitable.

The new procedures reflected a legislative determination that "reach[ing] a finality in legal proceedings is almost as essential as to see that they are righteously conducted," because definite limitation periods "quieted titles and prevented frauds." *In re Boileau's Est.*, 51 A. 338 (Pa. 1902). Thus, "[t]he very object of the statute was to limit the time when the election must be filed." *In re Minnich's Est.*, 136 A. 236, 237 (Pa. 1927). Accordingly, we proscribed allowing a survivor to pursue the elective share beyond the statutory period because to do so "would be in the teeth of the statute and practically destroy it." *Id.* "[E]quity cannot grant relief to a spouse who has neglected to file an election within the statutory period." *Id*. (citing *Pearce v. Pearce*, 118 N.E. 84 (Ill. 1917); *Akin v. Kellogg*, 23 N.E. 1046 (N.Y. 1890)). And as procedural constraints emerged, the need for judicially-applied equitable considerations receded. But even as the evolving statutory system answered many questions surrounding the elective share, others lingered.

One such question was addressed in *Daub's Estate*, the decision most important to our analysis in this case. Because the statute there at issue spoke only to the time

constraints for an initial election, this Court was asked to decide whether a survivor could revoke an election to take under the will after the statutory period to elect expired. The widow in *Daub's Estate* elected to take under the will of her deceased husband on February 23, 1923, about two months after his death. This election was timely under the governing statute, which provided "that a widow must make her election in writing within two years after the issuance of letters testamentary." *Daub's Est.*, 157 A. at 910 (citing Act of June 7, 1917, P.L. 403, 410).

For approximately the next six years, the widow received regular income from the estate pursuant to the terms of the will. However, on January 31, 1929, she filed a "petition asking [for] a decree vacating her existing election, and for leave to make a new election to take against the will." *Id*. The widow alleged that "she had been told by the executor that the value of the estate was $210,000," but she learned after the executor died that the estate was worth more. *Id*. In explaining why she had waited so long to question the executor's valuation, she claimed that, "because of the close relations between them, she did not seek legal advice until after [the executor] died." *Id*. The orphans' court granted the petition, holding that the executor's failure to provide the widow with certain information about the estate was "a constructive fraud on her, and laches should not be attributed to her in not filing a petition within the time usually required." *Id*. On appeal, the widow urged this Court to affirm the orphans' court because she did not discover the estate's true value until more than five years after her election.

We reversed, disagreeing that the untimely filing was excusable. We explained that:

> [a]s far back as 1863, when, under the then-existing laws, there was no time requirement within which a widow must elect to take against her husband's will or be presumed to consent to take under it, and where there was no formal election, and none was required, we said in *Bradford v. Kent* that we knew of "no case in which it has been held that a lapse of time of more than five years after acts done, which are usually treated as indicating an

> election, will not be binding upon a widow, and prevent her denial of an election, though the acts were done in ignorance of her rights." This was cited with approval in *Boileau's Estate*, and, so far as we are aware, has never been qualified.

Id. (citations modified). We also declined to "qualify our oft-repeated decisions that a widow is entitled to full information regarding her deceased husband's estate before she can be called upon to make her election," but held that the principle was inapplicable. *Id.* Unlike *Bradford* and the other decisions of its era, *Daub's Estate* involved "a formal election [and] a statutory time within which it was required to be made." *Id*.

The *Daub* Court observed that, in prescribing a limitations period, the General Assembly intended "to promote certainty in the settlement of estates." *Id.* at 911 (quoting *In re Baily's Est.*, 132 A. 343, 344 (Pa. 1926)). Consistently with that intent, we held that "ordinarily a petition to revoke an election must be presented within the statutory period after letters testamentary have been issued, or it will be deemed too late." *Id*. "In view of the positive provisions of the statute" the Court was "not persuaded that relief could be granted *ex gratia*." *Id*. A contrary conclusion would undermine the legislative goal to finalize the surviving spouse's share within the prescribed statutory period. The Court did, however, recognize a limited, equitable exception to the rule, emphasizing that a temporal limitation did not apply "where actual fraud has been committed to obtain the widow's election." *Id*. There, only laches could preclude revocation. *See id*.

Applying these principles, the Court disagreed with the orphan's court that the widow demonstrated that her delay was a product of fraud, and we explained further that the length of the delay caused "important evidence" to be "lost by death." *Id*. Although "the widow sa[id] she did not know the value of the estate during the running of the two-year period," we held that laches barred revocation. *Id*.

B. Parties' Arguments

The question in today's case is whether, under *Daub's Estate,* Arlene could revoke her election to take against the will more than three years beyond the deadline to file an election. According to Maura, Subsection 2210(b)'s six-month period is a limitation "on making ***and/or*** changing an election." Maura's Br. at 35 (emphasis added). Maura contends that the Superior Court misread *Daub's Estate*. Seizing upon our statement that "ordinarily a petition to revoke an election must be presented within the statutory period after letters testamentary have been issued, or it will be deemed too late," *Daub's Est*., 157 A. at 910, Maura maintains that only a showing of fraud or duress permits a revocation beyond the statutory limit. *See* Maura's Br. at 34-40. And she emphasizes that Arlene has neither demonstrated nor even alleged fraud or duress in this case. To permit revocation due simply to a "lack of full knowledge" would undermine the intent motivating Section 2210 to promote certainty in the settlement of estates. "If a surviving spouse is permitted to make a 'provisional election' and then is allowed to change her election, at any time with no time limitation whatsoever, until she makes some declaration about now having 'full knowledge' of the facts, the statute and common law rules would be rendered null and void." Maura's Br. at 33-34.

In defense of the Superior Court's tolling doctrine, Arlene draws upon our cautionary note in *Daub's Estate* that "[w]e do not qualify our oft-repeated decisions that a widow is entitled to full information regarding her deceased husband's estate before she can be called upon to make her election." *Daub's Est*., 157 A. at 910; *see* Arlene's Br. at 28. Although the *Daub* Court seemed to disapprove of revocations beyond the statutory period, Arlene insists, filing an election outside of that window is insufficient to disallow revocation without more. On that point, Arlene notes that the *Daub* Court

ultimately held that laches precluded the widow from seeking relief *because* important evidence was lost. Arlene's Br. at 26-27.

Arlene also questions whether *Daub's Estate* applies at all because the widow in that case was attempting to withdraw an election to take under the will and make a new election against the will. Arlene views this distinction as critical based upon her assertion that, unlike the revocation of an election to take under the will, her revocation did not require an attempt to exercise the right to pursue the elective share. *See id*. at 28-32.

C. Analysis

In substance, the parties dispute two aspects of our decision in *Daub's Estate*. First, they dispute whether a lack of knowledge suffices to permit revocation beyond the statutory period. Second, they disagree as to whether *Daub's Estate* applies to Arlene's petition at all, because that decision involved a revocation of an election to take under, not against, the will.

We reject Arlene's view and the Superior Court's adoption of it. Our courts have never held that the time to revoke an election "does not begin to run until the spouse has full knowledge of all essential facts." *Jabbour*, 244 A.3d at 1259. As the *Daub* Court observed, the full-knowledge rule was employed in cases wherein there was no formal mechanism to elect under the will and wherein there was no time limit upon the spouse's right to claim the elective share instead. That rule also helped determine whether a widow had made a binding "*in pais*" election, or could be "called upon" to make an on-the-record decision whether to take either the elective or the testate share. *See, e.g., Kreiser*, 69 Pa. at 201 (explaining that an election "made *in pais* . . . would be binding when the widow acted with full knowledge of the facts"); *Woodburn*, 21 A. at 17 (stating that, "where the widow is called upon . . . to make her election shortly after her husband's death" her election is not binding unless it was be "made with a full knowledge of the facts"). But

those practices no longer apply. And their demise extinguished the need for courts to assess whether the widow's (lack of) knowledge as to the value of the estate invalidated her election.

To hold that a lack of knowledge alone tolls the statutory period would ignore the basic legal precept that equity follows the law. *See Bauer v. P.A. Cutri Co. of Bradford*, 253 A.2d 252, 255 (Pa. 1969) ("[A] court of equity follows and is bound by rules of law, and does not use equitable considerations to deprive a party of his rights at law."). The General Assembly has declared that "the election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later." 20 Pa.C.S. § 2210(b). The time limit "promote[s] certainty in the settlement of estates." *Daub's Est.*, 157 A. at 911. It is a legislative expression that, within six months of the date of probate, all interested parties should know which assets are subject to the rights of the spouse and which are not. Our approval of a tolling principle "would be in the teeth of . . . and practically destroy" the legislative mandate evident in the statute. *Minnich's Est*., at 237. We cannot compromise our legislature's clear emphasis on certainty and finality for no better reason than that the surviving spouse came into new information—information that, critically, she does not allege was fraudulently hidden—years after she made a binding choice to take the elective share. So, a spouse who seeks to revoke an election must do so within the statutory period to make the election.

In arriving at our conclusion, we also disagree with Arlene that *Daub*'s reasoning should be limited to petitions to revoke an election to take under, but not against, a will. Section 2210 applies equally to both types of elections. *See* 20 Pa.C.S. § 2210(a) (addressing procedures for making a "surviving spouse's election *to take or not to take* his elective share") (emphasis added). And the provision containing the time limit, in

particular, draws no distinction between them. *See id*. § 2210(b). Regardless of which election is at issue, allowing surviving spouses to revoke their decision after the prescribed period citing nothing more than past or present uncertainty about the estate enduringly destabilizes what the General Assembly intended to fix for certainty's sake. The *Daub* Court correctly held that "ordinarily a petition to revoke an election must be presented within the statutory period after letters testamentary have been issued, or it will be deemed too late." *Daub's Est*., 157 A. at 910. This Court discerns no intervening reason to qualify or depart from that conclusion.

We also agree with Maura that approving Arlene's conduct would invite surviving spouses to file "provisional" elections to extend the period indefinitely while denying notice of the provisional intention to other beneficiaries or to the decedent's creditors, all while eluding judicial oversight. Nothing in the PEF Code or elsewhere contemplates taking an elective share as a precautionary measure. While the common law, operating in a statutory vacuum, found a place for equity in protecting the interests of surviving spouses, we no longer lack statutory guidance: The legislature embodied different protections in the Code. For example, spouses who believe that they lack sufficient information to select among the available alternatives may ask the orphans' court to extend the time limit. Under the Code, upon "application of the surviving spouse filed" within the statutory period, the orphans' court "may extend the time for election for such period and upon such terms and conditions as the court shall deem proper under the circumstances." 20 Pa.C.S. § 2210(b).

Despite evidently harboring suspicions that her knowledge of Caleem's estate was incomplete before the statutory time limit expired, Arlene did not seek such an extension. Arlene was not a spouse who, at the time of her election, was misled as to the relative values of the testate and elective shares. Rather, she simply doubted the sufficiency of

her knowledge of the estate in general. But instead of asking for more time, as the PEF Code invites her to do, she filed an election against the will "out of an abundance of caution," and then, over three years later, sought leave to revoke it when she figured out, as she might have done sooner, that taking under the will would have been worth more to her than taking the elective share. Tr. Ct. Op. at 2. The other parties to this litigation, against whom no misconduct has been alleged or proven, were entitled by law to assume that the election was final "six months after the decedent's death or . . . after the date of probate, whichever is later." 20 Pa.C.S. § 2210(b). Because Arlene's election was not a product of fraud or duress,[18] it became irrevocable upon expiration of the statutory period.

III. Conclusion

While we are not categorically indifferent to equitable concerns, we cannot adopt equitable doctrines—such as the "tolling principle" that the Superior Court divined in this case—that are inconsistent with the clear commands and objectives of the PEF Code. Arlene's attempt to revoke her election was inconsistent with Subsection 2210(b)'s time limit and the clear intent it embodies. Accordingly, we reverse the judgment of the Superior Court affirming the order of the orphans' court granting Arlene's revocation petition and remand for further proceedings consistent with this opinion.

Chief Justice Baer and Justices Todd, Donohue, Dougherty, Mundy and Brobson join the opinion.

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[18] We are not called upon to consider the continued equitable protections that the common law long has recognized where a spouse is compelled against his or her will to take under or against the will or is fraudulently misled as to aspects of the estate critical to such a selection—situations that the PEF Code does not address, which come with time-honored common-law protections that the legislature has never repudiated or disturbed.