

**SUPREME COURT OF LOUISIANA**

**99-C-0761**

**SUCCESSION OF JOSEPH PAGE BOYTER**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
SECOND CIRCUIT, PARISH OF CADDO**

**MARCUS, Justice, dissenting,**

Assuming that La. R.S. 9:2501 applies to the succession in the instant case, I find that in accordance with La. R.S.9:2501(B)(1)(a), Mr. Boyter manifested an intent to disinherit two of his children, Frances and Michael. La. R.S. 9:2501(B)(1)(a) provides in pertinent part that the testament shall be governed by the law in effect at the time of the testator's death (no forced heirship) when the testament "manifests an intent to disinherit a forced heir."

In my view, the manifestation of intent by the testator need not be by actual verbiage. The testator need not effect a disinheritance. Rather, it is only required that he manifest an intent to exclude forced heirs from inheritances under his will. Intent is determined by the circumstances.

At the time that Mr. Boyter made this testament, forced heirship for children over the age of twenty-three had been abolished by the legislature; therefore, there was no reason for him to do anything other than what he did in order to leave two of his children out of his will. Subsequently, when La. R.S. 9:2501 was amended and reenacted in 1995, the statute required only a manifestation of intent to disinherit. Mr. Boyter had four children but his testament left his estate to only two of his children. I consider this to be a clear manifestation of intent to disinherit the two children who were omitted from the testament, particularly in view of the fact that forced heirship had been abolished at the time he executed his will.

I further find that under La. R.S. 9:2501(B)(1)(c), Mr. Boyter indicated an intent to restrict two of his children, Frances and Michael, to an amount less than the legitime, i.e., nothing. La. R.S. 9:2501(B)(1)(c) provides in pertinent part that the testament be governed by the law in effect at the time of the testator's death (no forced heirship) when the testament "indicates an intent to restrict the forced heir to an amount less than the legitime." Since the testator omitted Frances and Michael from his will and left the entire amount of his estate to the remaining two children, he clearly indicated an intent to leave nothing to Frances and Michael.

Accordingly, I respectfully dissent.