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Wills - Testamentary Capacity - Insane Delusion

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revive the prior will a new will or codicil must be executed.¹⁰ This view is sustained by reason and weight of authority, although disapproved by a minority of the courts.¹¹ North Dakota follows the English rule through statute.¹²

In conclusion it is interesting to note that where not governed by statute each view claims to have the weight of authority. It seems that the revival and anti-revival theories are too rigid and may easily destroy the intent of the testator, however the intent theory has remedied this situation and consequently would result in a more just decision.

VINCENT SONJU.

WILLS — TESTAMENTARY CAPACITY — INSANE DELUSION. — After forty years of happy married life decedent became obsessed with the idea that his wife was unfaithful. In fact he had some basis for such thinking although it was illogical, unreasonable, and unjust. The testator was rational and apparently of sound mind in all other respects. The court said that one who believes in suppositions which have no existence except in his imagination is suffering from a morbid delusion so far as these beliefs are concerned. And though he conducts himself logically upon the assumption of the delusion, on that particular subject it is an insane delusion. The New York Court of Appeals *held*, three justices dissenting, that the question of testamentary capacity was for the jury. *In re Honigman's Will*, 8 N.Y.2d 244, 168 N.E.2d 676 (Ct. App. 1960).

An insane delusion which affects the provisions of a will is held to be sufficient to void a will for lack of testamentary capacity.¹ Since the testator's mental capacity is assumed² the burden of coming forward with the evidence to prove the lack of testamentary capacity is upon the contestants.³ However, a delusion to be declared an insane delusion⁴ must be an irremovable belief that is not true or does not exist, based on no evidence whatever; consequently causing the testator to dispose of his property in a manner different from what he would have followed in the absence of such a belief.⁵

Testator's delusions of wife's unfaithfulness, children's illegitimacy, feelings of having life threatened, or other feelings, however eccentric or absurd, do not invalidate a will if there is some basis for such thoughts.⁶

10. *Driver v. Sheffield*, 211 Ga. 316, 85 S.E.2d 766 (1955); *Singleton v. Singleton*, 269 Ky. 330, 107 S.W.2d 273 (1937); *In re Walsh's Will*, 5 Misc.2d 801, 161 N.Y.S.2d 227 (Sur. Ct. 1957). *In re Eberhardt's Estate*, 1 Wis.2d 439, 85 N.W.2d 483 (1957).

11. See *Blackett v. Ziegler*, 153 Iowa 344, 133 N.W. 901, 904 (1911).

12. N.D. Rev. Code § 56-0408 (1943).

1. *In re Leonard's Estate*, 92 Cal.App. 420, 207 P.2d 66 (1949); *Sterling v. Dubin*, 6 Ill.2d 64, 126 N.E.2d 718 (1955); *Thayer v. Thayer*, 188 Mich. 261, 154 N.W. 32 (1915).

2. *Houston v. Grigsby*, 217 Ala. 506, 116 So. 68 (1928); *Roller v. Kurtz*, 6 Ill.2d 618, 129 N.E.2d 693 (1955); *Black v. Smith*, 58 N.D. 109, 224 N.W. 915 (1929).

3. *In re Johnson's Will*, 201 Iowa 687, 207 N.W. 748 (1926); *Black v. Smith*, 58 N.D. 109, 224 N.W. 915 (1929); *Hedderisch v. Hedderisch*, 18 N.D. 488, 123 N.W. 276 (1909).

4. Herzog, *Medical Jurisprudence*, "Not every delusion is an insane delusion. If the belief is supported by any facts, however little their evidential force, then it is not an insane delusion although it may appear illogical and foundationless." *Bohler v. Hicks*, 120 Ga. 800, 48 S.E. 306 (1904). "The delusion must spring up spontaneously in the mind of the person, and not be the result of evidence of any kind."

5. *John v. Tallett*, 341, Ill.App. 240, 93 N.E.2d 62 (1950); *Jackman v. North*, 398 Ill. 95, 75 N.E.2d 324 (1947); *Potter v. Jones*, 20 Ore. 239, 25 Pac. 769 (1891).

6. *In re Alegria's Estate*, 87 Cal.App.2d 645, 197 P.2d 571 (1948); *In re Hayer's Estate*, 230 Iowa 880, 299 N.W. 431 (1941); *In re Cole*, 5 N.W. 348 (Wis. 1880).

A mistake in judgment or an erroneous conclusion is not an insane delusion.⁷ Even though it be a conclusion which the average person would not draw, if truly a conclusion it is attributable only to a dull, hasty, willful or eccentric judgment, and not to an insane delusion.⁸ Only when the belief becomes such a mania that it destroys the testator's power to reason will the testator lose the testamentary capacity.⁹ This is true even if there is basis for the testator's belief.

The testator's insane delusion must affect the will at the time of its execution as to the extent of his estate, the nature of the provisions or the objects of his bounty.¹⁰ The mere prejudice or dislike that a testator has for natural objects of his bounty is not grounds for invalidating a will.¹¹ Deeply engrained in our capitalistic and individualistic philosophy is the premise that one may do what he wishes with his own.¹²

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7. *In re Struve's Estate*, 100 Cal.App. 255, 279 Pac. 846 (1929); *Bohler v. Hicks*, 120 Ga. 800, 48 S.E. 306 (1904); *Jorn v. Tallett*, 341 Ill. 240, 93 N.E.2d 82 (1950).

8. *Jones v. Nat'l. Bank of Commerce in Memphis*, 220 Ark. 665, 249 S.W.2d 105, (1952); *Taylor v. McClintock*, 87 Ark. 243, 112 S.W. 405 (1908); *In re Stephenson's Estate*, 132 Ore. 234, 285 Pac. 224 (1930).

9. See *Barr v. Sumner*, 183 Ind. 402, 109 N.E. 193 (1915); *O'dell v. Goff*, 149 Mich. 152, 112 N.W. 736 (1907); *Ingersoll v. Gourley*, 78 Wash. 406, 139 Pac. 207 (1914). These cases refer to religious or spiritual beliefs which have destroyed the reasoning power.

10. *In re Selb's Estate*, 84 Cal.App. 46, 190 P.2d 277 (1948); *In re Hayer's Estate*, 230 Iowa 880, 299 N.W., 431 (1941); *Roller v. Kurtz*, 6 Ill.2d 618, 129 N.E.2d 693 (1955).

11. *Jackman v. Noth*, 398 Ill. 95, 75 N.E.2d 324 (1947); *Drum v. Capps*, 240 Ill. 524, 88 N.E. 1020 (1909); *Heddeich v. Hedderich*, 18 N.D. 488, 123 N.W. 276 (1909).

12. See *Potter v. Jones*, 20 Ore. 239, 25 Pac. 769 (1891), "While it seems harsh and cruel to disinherit one's children and devise to strangers for some unworthy motive, yet so long as that motive, whether from pride, aversion, spite, or prejudice, is not resolvable into mental perversion, no court can interfere."