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Wills—Testamentary Capacity—Insane Delusions

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limitations suggested by the Department in both its regulation and its arguments. It has established a policy of flexibility (possessing the earmarks of durability—all nine judges concurred in the opinion), which will permit the true sufferer to receive remuneration, but still it specifically refrained from opening the door to undeserving claimants:

> This decision is not to be construed as standing for the proposition that all persons who are laid off, and who are relatively unsuccessful in their self-employment endeavors, are considered to be unemployed, or partially unemployed, and entitled to receive the difference between the amount they make and the benefits to which they otherwise would have been entitled.[17]

This decision might be criticized for "opening the floodgates of litigation" as each farmer-laborer seeks to discover whether his particular circumstances will find favor with the supreme court, but this is why we have courts. Surely this decision will produce more litigation, but as each case is decided the boundaries will become more certain and fixed, and in the end we will have a rule that is the product of reason and policy, and not one that is closely circumscribed by the shortcomings of semantic definitions.

HAYES ELDER

WILLS

Testamentary Capacity—Insane Delusions. *In re Meagher's Estate*[1] apparently establishes a new rule requiring that the contestant of a will on the ground of insane delusions must show that the delusion,

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to produce goods, to make them and to sell at profit sufficient to attract to that industry the capital of the country. Without purchasers with money in their pockets, the wheel of that industry cannot keep going. . . . We must anticipate in the future the building up . . . of a large and steady purchasing power for a large number of people." Hearings on S. 1130 Before the Senate Committee on Finance, 74th Cong., 1st Sess. (1935). William Green, then president of the CIO, testified to the same effect. Evaluating the Federal Social Security Act in a speech (An appraisal of the Federal Social Security Act, Delivered before the Institute of Public Affairs, University of Virginia, Charlottesville, Virginia, evening of July 10, 1936) Winthrop W. Aldrich, Board Chairman of the Chase National Bank of the City of New York, commented as follows: "The gains through unemployment insurance are numerous. Its first effect is to diminish in the mind of the worker the fear of insecurity. He knows that if he should lose his job he would not immediately face a total loss of income. There will be at least some income during a few weeks or months while he is looking for new work. This relief . . . will be an amount that he can count on. There will be no humiliation in accepting it. . . . It will be an earned right. . . .

"There is something to be said, also, for the effect of unemployment insurance on business. It helps to stabilize the buying power of the workers. . . . [it] helps . . . to keep buying in its accustomed channels."

[17] 160 Wash. Dec. at 719, 375 P.2d at 161 (1962).

[1] 160 Wash. Dec. 691, 375 P.2d 148 (1962).

exclusive of any rational motive, was the controlling cause in the disposition of the property.[2]

Mrs. Meagher, the testatrix, took her sister's son, the contestant, into her home and raised him as her own son after the contestant's mother was committed to Western State Hospital in 1935. In 1940 Mrs. Meagher executed a will by which she gave all her property to the contestant.

In 1955, when she was seventy-nine years of age, Mrs. Meagher sustained a hip injury which resulted in hospitalization. Shortly afterward the contestant filed a petition for the appointment of his law partner as guardian of Mrs. Meagher's estate, and the appointment was thereafter secured. This guardianship was procured without first consulting Mrs. Meagher. In the summer of 1956, after Mrs. Meagher's return home, she was examined by her family physician at the request of her guardian. Even though the results indicated no further need of a guardian, the guardianship was not terminated until December 13, 1956, and then only upon the insistence of an attorney whom Mrs. Meagher had employed after her return from the hospital.

At the time Mrs. Meagher consulted her attorney about the guardianship, she expressed displeasure with her nephew because he would not terminate it and because he had caused bonds to be sold to pay her expenses when other money was available. Mrs. Meagher had deposited funds in a voluntary revocable trust account of which the contestant was the beneficiary and in which there were sufficient funds to pay her bills. The contestant explained that he had no recollection of the existence of the passbook during the guardianship and had not discovered it in the office safe until 1960.

In 1957 Mrs. Meagher consulted her attorney about executing a will. Upon his advice Mrs. Meagher submitted to an examination by her family physician. The results showed that Mrs. Meagher had sufficient capacity to execute a will. The examinining physician also informed the contestant of the results, and was advised by the contestant that a further examination should be held to determine whether Mrs. Meagher suffered from any insane delusions toward him. The will in question was executed on October 1, 1957, and a week later Mrs. Meagher was re-examined by her family physician, who concluded that she was suffering from insane delusions that her nephew was persecuting her. This opinion was substantiated at the trial by the testimony of a

[2] *Id.* at 700, 375 P.2d at 153.

psychiatrist in answer to hypothetical questions.

This later will provided a bequest for contestant's mother, for whom the 1940 will had made no provision, and bequests of equal amounts to all her nieces and nephews, including the contestant. The trial court held the will invalid, basing its decision on the medical testimony.

In reversing the trial court and upholding the validity of the will, the supreme court starts with the presumption that the testatrix had testamentary capacity upon the showing that her will was properly executed and rational on its face.[3] The court then says that

> even if there was evidence of an insane delusion of such a nature as to affect the will, there was substantial evidence of other rational motives for the disposition made. The respondent [nephew] has failed to overcome the presumption of validity and to show that the delusion, exclusive of the rational motive, was the controlling cause in the disposition of the property. . . .[4]

Prior to the onset of the alleged insane delusions, Mrs. Meagher's affection for the contestant was the same that she would have had for her own son. The 1940 will showed that she desired to leave to him the bulk of her property. Although this fact would support the contestant's proposition that the provisions of the 1957 will resulted from delusions, the court also looks to facts which demonstrate logical and rational motives for the change in the disposition of her property: The testatrix was very close to her sister who had been committed to the mental hospital. She had observed the equity with which her brother's will had provided for their confined sister, while her own 1940 will had made no such provision. She had also observed that her brother had dealt equally with his nephews and nieces, even though some had been closer to him than others. The contestant was financially independent and the testatrix had already done much for him to the exclusion of her other nephews and nieces. The will itself expressed no bitterness toward the contestant, and the bequest to him was equal to that received by others in the same blood relationship to the testatrix. The court concludes that the totality of these facts "overwhelmingly" demonstrates the will to have been the product of a rational mind and of logical motives, and not the product of any insane delusions which may have affected the testatrix.[5]

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[3] *Id.* at 692, 375 P.2d at 149.
[4] *Id.* at 700, 375 P.2d at 153.
[5] *Id.* at 700-01, 375 P.2d at 154.

CAPACITY

The execution of a will should be a free and voluntary act of the testator, necessarily implying some degree of mental competency.[6] Since the right to dispose of property by will is protected by statute,[7] it is first necessary to discover the statutory requirements pertaining to capacity. But the statute only requires the testator to be of "sound mind,"[8] so the court must provide the standard for determining whether a particular testator executed his will as a free and voluntary act.

In defining this standard the courts start with the presumption that a testator has capacity if the will is rational on its face and is shown to have been executed according to law.[9] To overcome this presumption the contestant must introduce evidence to show that at the time the will was executed the testator did not have sufficient mind and memory to recollect the natural objects of his bounty, to comprehend generally the nature and extent of his property, or to understand the transaction in which he was then engaged.[10] This evidence must be clear, cogent, and convincing.[11] But even though a testator has general testamentary capacity,[12] the instrument will still fail if the testator makes his disposition as a result of an insane delusion.[13]

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[6] ATKINSON, WILLS 233 (2d ed. 1953).

[7] *In re* Drown's Estate, 160 Wash. Dec. 110, 372 P.2d 196 (1962); *In re* Gordon's Estate, 52 Wn.2d 470, 326 P.2d 340 (1958); *In re* Martinson's Estate, 29 Wn.2d 912, 190 P.2d 96 (1948); *In re* Hamilton's Estate, 26 Wn.2d 363, 174 P.2d 301 (1946).

[8] RCW 11.12.010: "The following persons of *sound mind* may, by last will, devise all his or her estate, both real and personal . . . ." (Emphasis added.)

[9] *In re* Mitchell's Estate, 41 Wn.2d 326, 249 P.2d 385 (1952); *In re* Gwinn's Estate, 36 Wn.2d 583, 219 P.2d 591 (1950); *In re* Kessler's Estate, 35 Wn.2d 156, 211 P.2d 496 (1949).

[10] *In re* Youngkin's Estate, 48 Wn.2d 432, 294 P.2d 426 (1956); *In re* Peter's Estate, 43 Wn.2d 846, 264 P.2d 1109 (1953); *In re* Mitchell's Estate, 41 Wn.2d 326, 249 P.2d 385 (1952).

[11] *In re* Drown's Estate, 160 Wash. Dec. 110, 372 P.2d 196 (1962); *In re* Gordon's Estate, 52 Wn.2d 470, 326 P.2d 340 (1958); *In re* Youngkin's Estate, 48 Wn.2d 432, 294 P.2d 426 (1956).

[12] At this juncture it must be mentioned that there is a divergence of opinion between medical and legal authorities as to what constitutes insanity. In Green, *Public Policies Underlying The Law of Mental Incompetency,* 38 MICH. L. REV. 1189, 1191 (1940), the author says: "The difficulty lies in the fact that insanity has a lay meaning, a medical meaning, and a legal meaning, no two of which coincide. The lay meaning is vague and may connote anything from eccentric conduct to raving madness. Medical men are not agreed upon a definition of insanity for medical purposes, and courts are not agreed upon a definition of insanity for legal purposes. Doctors have disowned the word and coined their own term of mental disorder. Courts are aware of the fact that insanity is not a term which has legal significance, that only particular kinds or degrees of insanity require changes in legal relations. . . . Hence the term mental incompetency, by which we mean that type of degree of mental disorder, in any particular case, which is legally significant and which produces a different legal result than would have flowed from the same situation had not that particular type or degree of mental disorder been present."

[13] Winn v. Dolezal, 355 P.2d 859 (Okla. 1960); *In re* Duross' Estate, 395 Pa. 492, 150 A.2d 710 (1959); *In re* Gwinn's Estate, 36 Wn.2d 583, 219 P.2d 591 (1950);

INSANE DELUSIONS[14]

An insane delusion is not merely a false belief.[15] We all hold false beliefs of one sort or another at some time during our lives. But these false beliefs, even though they motivate our actions, are not so fixed that we cannot be persuaded to abandon them.[16] These false beliefs may consist in bias or dislike toward a relative; but even though unexplained and irrational, they will not by themselves amount to an insane delusion.[17] Filthy habits, unsociability, and miserliness will not by themselves invalidate a will.[18] Peculiar religious beliefs, like a belief in Spiritualism, will not alone be sufficient.[19]

> An insane delusion, therefore, is more than just a mere delusion, a false belief, an eccentricity, a clash between two persons of different temperament or personality, or a religious or racial prejudice of ancestral origin. It is a delusion that is the product of a sick or diseased mind and that is held to without evidence or rational basis. . . .[20]

To what will the courts look to determine whether a delusion is an insane one? In Washington, the standard was set forth in *In re Klein's Estate*.[21] There the court said that "an insane delusion denotes a false belief, which would be incredible in the same circumstance to the victim thereof were he of sound mind, and from which he cannot be dissuaded by any evidence or argument. . . ."[22] But upon establishing that there is an insane delusion under this standard, will it mean an automatic invalidation of the will?

In answering this inquiry the court in the *Klein* case quotes with

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In re Klein's Estate, 28 Wn.2d 456, 183 P.2d 518 (1947); *In re* Wicker's Will, 15 Wis.2d 86, 112 N.W.2d 137 (1961).

[14] It must again be mentioned that this discussion is only relevant as to the legal definitions of insane delusions. "Even though a testator may have intellectual capacities far above the standard set by the law . . . his testamentary dispositions still will be held void if he entertains an insane delusion on but one subject where that delusion motivated the disposition made of his property. . . . Psychiatrists will tell us that if a man entertains but one insane delusion referable only to one particular subject he is not of sound mind. This may be true in a medical sense, but it certainly is not true of the legal definition of a sound mind. . . ." Green, *Public Policies Underlying The Law Of Mental Incompetency*, 38 MICH. L. REV. 1189, 1218 (1940).

[15] 1 PAGE, WILLS § 12.29 (rev. ed. 1960).

[16] *Ibid.*

[17] *In re* Alegria's Estate, 87 Cal. App. 2d 645, 197 P.2d 571 (Dist. Ct. App. 1948); *In re* Sommerville's Estate, 406 Pa. 207, 177 A.2d 496 (1962); *In re* Duross' Estate, 395 Pa. 492, 150 A.2d 710 (1959); *In re* Gwinn's Estate, 36 Wn.2d 583, 219 P.2d 591 (1950).

[18] *In re* Miller's Estate, 10 Wn.2d 258, 116 P.2d 526 (1941).

[19] *In re* Hanson's Estate, 87 Wash. 113, 151 Pac. 264 (1915).

[20] 1 PAGE, WILLS § 12.29 (Rev. Treat. 1960).

[21] 28 Wn.2d 456, 183 P.2d 518 (1947).

[22] *Id.* at 472, 183 P.2d at 526.

approval from another leading case, *In re Shanks Will*:[23]

> It is not a question whether testator had general testamentary capacity, for many persons laboring under insane delusions may be competent to make a will (In re Will of Cole, 49 Wis. 179, 5 N.W. 346), but whether the insane delusion under which the testator suffered materially affected the will he made. In other words, is it reasonably certain that but for the insane delusion his wife would have received a materially larger devise? . . .[24]

The court in the *Klein* case then proceeds to establish the criterion whereby an insane delusion will invalidate a will:

> An insane delusion having been found to exist, it becomes necessary to determine whether such delusion *materially* affected the will or some provision thereof. It is not every insane delusion that will render a will invalid, but only such as enters into the product of the testamentary instrument. . . . (Emphasis added.)[25]

The standard in Washington[26] conforms with that of other jurisdictions which invalidate a will by reason of an insane delusion only if it is a product of that delusion.[27]

However, the court in the *Meagher* decision does not rely on the *Klein* test, although they cite the case with approval.[28] Instead they rely on a rule from an annotation in the American Law Reports:[29]

> [E]ven if there is evidence of an insane delusion of such a nature as to affect the will, if there is also evidence of some other and rational motive for the disposition made, the burden is upon the contestant to rebut or overcome the legal presumption of validity, by showing that the delusion, exclusive of rational motive, was the controlling cause. . . .[30]

In the cases cited by the annotator the courts uphold the wills because the contestant's behavior toward the deceased furnish valid reasons for disinheritance by any person. The courts then go on to hold that the contestant in each case has not shown that the insane delusion was the

[23] 172 Wis. 621, 179 N.W. 747 (1920).
[24] *Id.* at 748; *In re* Klein's Estate, 28 Wn.2d 456, 471, 183 P.2d 518, 526 (1947).
[25] 28 Wn.2d at 472, 183 P.2d at 526.
[26] *In re* Gwinn's Estate, 36 Wn.2d 583, 219 P.2d 591 (1950); *In re* O'Neil's Estate, 35 Wn.2d 325, 212 P.2d 823 (1949).
[27] Eason v. Eason, 203 Va. 246, 123 S.E.2d 361 (1962); Winn v. Dolezal, 355 P.2d 859 (Okla. 1960), citing *In re* Klein's Estate, 28 Wn.2d 456, 183 P.2d 518 (1947); *In re* Wicker's Will, 15 Wis.2d 86, 112 N.W.2d 137 (1961).
[28] 160 Wash. Dec. at 692, 375 P.2d at 149.
[29] *Id.* at 693, 375 P.2d at 150; Annot., *Testamentary Capacity—Insane Delusions* 175 A.L.R. 882, 964 (1948).
[30] 160 Wash. Dec. at 693, 375 P.2d at 150.

controlling factor, *i.e.*, that it took predominance over the valid reasons for disinheritance.[31] However, the court in *Meagher* applies the rule to a situation where the contestant has not behaved toward the testatrix so as to furnish any valid reasons for disinheritance.

Opposed to *Meagher* is a recent New York decision which rejects the rule that rational reasons for the disposition made may support the validity of the will even though there are insane delusions which affect the will. In *In re Honigman's Will*,[32] the proponents argued that even if the testator was suffering from an insane delusion of his wife's infidelity, the will was nevertheless valid because of the size of the contestant's independent fortune and the financial need of the testator's residuary legatees. The court rejected this argument, quoting from an earlier New York case,[33] where they had said "that a will was bad when its 'dispository provisions were or *might have been* caused or affected by the delusion'. . . ." (Emphasis added.)[34]

On the other hand, in a recent Pennsylvania case,[35] the court inquired into the rational reasons and motives behind the testator's disposition,[36] even though they accepted the evidence of an insane delusion. From

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[31] Annot., *supra* note 29, at 964-66 (1948). The following cases are some of those cited by the annotator: In Coit v. Patchen, 77 N.Y. 533 (1879), the husband attacked his wife's will on the ground that she was suffering from insane delusions as to his relations with other women. The court sustained the validity of the will since there was also evidence of violent quarrels, frequent separations, and at one time a divorce suit, and the husband could not show that she acted on the delusions instead of these other reasons for discriminating against him. In Lareau v. Lareau, 208 S.W. 241 (Mo. 1918), there was evidence that the testatrix had an insane delusion that her brother intended to kill her; but there was also evidence that her brother had mistreated her for years. In *In re* Nicholas, 216 App. Div. 399, 215 N.Y.S. 292 (1926), *aff'd without opinion* in 244 N.Y. 531, 155 N.E. 885 (1926), the testator's son contended that the testator had acted under an insane delusion that the son intended to kill him. There was evidence of long quarrels and litigation between them, and the court held that even if the insane delusion did exist it would not invalidate the will if the testator had other reasons for disinheriting his son. The case cited in the annotation most similar to the present case is that of Potter v. Jones, 20 Ore. 239, 25 Pac. 769 (1891), where the testator's contesting daughter had remained with her mother after the testator and his wife were divorced. This period of separation extended over twenty years. The evidence showed that the testator harbored an insane delusion that his daughter was illegitimate. The court upheld the validity of the will on the basis of evidence which showed that the cause for disinheriting the daughter was that she was in good circumstances, and that the children who remained with him had assisted in the accumulation of the estate.

[32] 8 N.Y.2d 244, 168 N.E.2d 676 (1960).

[33] American Seaman's Friend Soc'y v. Hopper, 33 N.Y. 619, 625 (1865).

[34] *In re* Honigman's Will, 8 N.Y.2d 244, 168 N.E.2d 676, 679 (1960).

[35] *In re* Duross' Estate, 395 Pa. 492, 150 A.2d 710 (1959).

[36] *Id.* at 717: "Margaret Duross did not leave her estate—hating and being hated by everybody—to a Home for homeless cats, or even to a Church or Charity; she left it to her best friend, who was unmarried and whom she wanted to financially aid and protect. Moreover, she appointed one of her brothers executor of her will; and, as above mentioned, she left part of her property, viz., her retirement fund of $3,543, to her sister . . . and a $10,000 insurance policy to her nephews and nieces, four of whom were children of the contestant. . . ."

the face of the will and the disposition of the testator's property, the court concluded that the will was valid: "[W]here insane delusions do exist, but the will itself shows that they did not control the will or were not the cause which *motivated and influenced* the decedent's disposition of his estate, the delusions have no relevancy and cannot invalidate the will...." (Emphasis added.)[37] The *Meagher* decision would derive support from that result, for the Washington Supreme Court says therein: "It is evident that, whatever delusions she may have had, she put them aside when she designed her will.... The evidence is overwhelming that the will was the product of *logical* and *rational motives* and not of any insane delusion which the testatrix may have suffered...." (Emphasis added.)[38]

But is it necessary for the court to adopt a new standard? Cannot the same decision be reached under the existing rule of the *Klein* case? The court in that case said that the insane delusion must be a *material* cause of changes made in the will.[39] The contestant in the *Meagher* case was not disinherited but received an equal bequest with all others in the same blood relationship with Mrs. Meagher. Her previous will had contained no provision for her beloved and helpless sister. The contestant had attained financial independence, and the will itself contained no expression of bitterness or illwill toward the contestant. In light of these facts, is it not reasonable to conclude that the insane delusion was not a material cause of the change made in the will?[40] Since Mrs. Meagher's will apparently withstands attack under the *Klein* rule, one may wonder why the court has undertaken to impose a heavier burden on contestants by requiring them to prove that an insane delusion is not only a material, but also a controlling, cause of the testator's disposition.

In dictum the *Meagher* opinion announces two rules which no Washington decision has apparently mentioned before. The first is that if there is any actual basis for the belief held by the testator, even though it is not well founded and is disbelieved by others, the belief will not

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[37] *Id.* at 717.
[38] 160 Wash. Dec. at 701, 375 P.2d at 154.
[39] 28 Wn.2d at 472, 183 P.2d at 526.
[40] The court in the *Klein* case says that a will is only invalid when the insane delusion enters into the "product of the testamentary instrument." Consequently it might be argued that the insane delusion need only touch upon the will to invalidate it. It is logical to assume, however, that this statement would be limited by the preceding sentence requiring the insane delusion to "materially affect the will." Therefore, the insane delusion must materially enter "into the product of the testamentary instrument." See text accompanying note 25 *supra.*

be such a delusion as will invalidate the will.[41] The second is "that a will is not invalidated by a delusion of the testator with respect to a relative who is provided for with reasonable liberality by the will. . . ."[42] It is questionable whether the Washington court would follow either of these rules in the future. Since the definition of an insane delusion has been established by the *Klein* case, the former rule would appear to be unnecessary. The latter rule has no recent support and is too rigid for practical application.

As a result of the *Meagher* decision, it appears there are now two rules in Washington with respect to insane delusions. The *Klein* test, which concentrates on the effect of the insane delusion on the will, and the *Meagher* test, which concentrates on the circumstances surrounding its distributive provisions.[43] Consequently a contestant has a greater burden of proof than before, for now he must not only prove that the alleged insane delusion affected the will, but also that it was the controlling factor.

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[41] 160 Wash. Dec. at 693, 375 P.2d at 150. This rule has support from *In re* Alegria's Estate, 87 Cal. App. 2d 645, 197 P.2d 571 (Dist. Ct. App. 1948); and has been rejected in *In re* Wicker's Will, 15 Wis.2d 86, 112 N.W.2d 137 (1961).

[42] 160 Wash. Dec. at 694, 375 P.2d at 150.

[43] In the alternative it may be suggested that the *Meagher* decision does not create a new rule but rather provides a stricter interpretation of the *Klein* case.