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Joseph P. Guadnola

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Insane Delusions---Phenomena Affecting Testamentary Capacity in the Execution of Wills

By Joseph P. Guadnola.

When common sense directs us to conform to the dictates of conscience, the results of our deliberations are incontestible. Without common sense we act unconsciously, as it were, and consequently our performances may be subject to litigation. Thus we may commence by saying that soundness of the mental faculties is indispensable in the execution of a valid will. We are not now treating wills merely as tangible documents but, technically, and in the legal sense, we are treating them as meaning "all the words, signs, and symbols, which the testator has issued and has left unrevoked to indicate what shall be done concerning his property and affairs after his death."¹ An essential element of testamentary capacity is that the testator have a "disposing mind"² at the time he executes his will. Roughly speaking, testamentary capacity is destroyed in cases of complete insanity. There are cases, however, where a person may not be completely insane and yet be dispossessed of a disposing mind at the requisite time. Such cases are very frequently grounded on delusional insanity, or that type of mental condition which is generally referred to as the insane delusion.

A person is possessed of an insane delusion when he stubbornly believes certain facts to exist which really have no existence or even a reasonable foundation. He persists in believing these facts regardless of evidence to disprove them and of the existence of contrary facts which fashion his

¹ VI American Law and Procedure 33.
² In Hall v. Perry, 87 Me. 569, 572, 33 A. 160, 47 Am. St. Rep. 572, Whitehouse J., in speaking of a disposing mind states that one must have "sufficient capacity to comprehend the condition of his property, his relations to the persons who were or should have been the objects of his bounty, and the scope and bearing of the provisions in his will." See Costigan Cases on Property 5 (Wills-2d.Ed.), page 21 in the footnote. See, also, Speirer v. Curtis, 143 N.E. 427, 312 Ill. 162; Needham Trust Co. v. Cookson, 251 Mass. 160, 146 N.E. 268; Forberg v. Maurer, 336 Ill. 192, 168 N.E. 308 (1929). Testator has "mental capacity" to execute will if he can comprehend personal objects of bounty, kind of property, and make disposition thereof under plan he formed. Flanigon v. Smith, 337 Ill. 572, 169 N.E. 767 (March 1930). See, also, In re Bayer's Estate, 227 N.W. 928 (Nebraska, 1930).
beliefs into an apparent absurdity. The belief may be in something impossible in the nature of things or impossible under the circumstances surrounding the victim.\textsuperscript{3} But in order for the notions of the testator to constitute an insane delusion they must be a product of the imagination, without any sort of evidence to support them. A belief which may be unfounded, unreasonable, or extravagant does not constitute an insane delusion if it is based upon any evidence, however slight.\textsuperscript{4} Such notions may be said to be deduced from facts and thus they may be properly classed with conclusions. This point is clearly illustrated in \textit{Smith v. Smith},\textsuperscript{5} where it was claimed, in proceedings to set aside a will, that the unsoundness of mind of the testator was manifested by his search for gold and coal on his farm, and that his belief that gold could be found in paying quantities was a delusion resulting from an unsound state of mind. But it appeared that the notions which the testator had concerning the probability of finding gold and coal were not purely imaginative but had same basis in fact. Consequently the court held that such ideas of the testator were conclusions, and not delusions as it was claimed. A misapprehension of a fact is not necessarily a delusion, at least of sufficient bearing to invalidate a will. The testator's beliefs may not be well founded. They may be disbelieved by other persons. Yet he may have actual grounds for suspicion of the existence of that something in which he so persistently believes. In such a case the alleged belief's justly deserve sufficient consideration and investigation. And so, if, under the facts of a case, a court is able to understand how a person, in a situation similar to the person alleged to be afflicted with an insane delusion, might have believed as the evidence shows he believed, and still have enjoyed the full possession of his senses, then it may be rightly said that the case does not establish the existence of an insane delusion.

The influence which insane delusions have on testamentary disposition is generally of a serious nature. In order to show that testamentary disposition has been affected by insane delusions it must appear that the testator's delusions

\textsuperscript{3} Farmer v. Davis, 289 Ill. 392, 124 N.E. 640 (1919).
\textsuperscript{4} Schweitzer v. Bean, 154 Ark. 228, 242 S.W. 63 (1922).
\textsuperscript{5} 206 Ill. App. 116 (1917).
in some manner entered into the making of his will. The holding of delusions does not of itself constitute testamentary incapacity but affects testamentary capacity only when it enters into or controls in some degree its exercise. And delusions not influencing the will do not affect its validity. The reason for this rule is that the testator’s mental capacity at the time of the execution of his will determines the validity of the instrument. Thus a person may be laboring under an insane delusion subsequent to the making of his will and the delusion may even move him to make the will, yet if it does not influence or control him in the disposition of his property his testamentary capacity will not be destroyed. Under such a state of facts it would be difficult to prove that when he executed the will his testamentary capacity was materially affected, and ordinarily in the absence of influence while making his will the testator’s judgment in the disposition of his property is free from serious consequences.

The different forms which insane delusions assume are manifold. For present purposes simply a few of the most common specific examples will be treated. One of these forms is a dislike for natural objects of the testator’s bounty. In many instances testator believes that such persons have been guilty of misconduct, (this belief only to be proved erroneous when the will is brought for probate). Whether not such a belief should amount to an insane delusion is to be determined by evidence. It may amount to an insane delusion if it is not based on evidence and cannot be removed by evidence. Another form to which this test may be applied is where the testator wrongly believes that the natural objects of his bounty or those who should have been the natural objects of his bounty have been hostile to him.

An unfortunate situation arises when in the execution

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6 In re Sturdevant’s Estate, 92 Oregon 269, 180 Pac. 595 (1919); In re Heaton’s Will, 224 N. Y. 22, 120 N.E. 83 (1919).
8 Jenkins v. Trice, 147 S.E. 251 (Virginia, 1929); Pickens v. Wisman, 145 S.E. 177 (West Va., 1928); Dersis v. Dersis, 210 Ala. 396, 89 So. 27 (1923); In re Perkinson’s Estate, 195 Cal. 691, 236 Pac. 45 (1925); In re Shield’s Estate, 198 Iowa 686, 200 N.W. 219 (1924); In re Wah-kon-tah-he-um-pah’s Estate, 109 Okla. 126, 284 Pac. 210 (1929); In re Wegner’s Estate, 135 Wis. 497, 203 N.W. 826 (1925).
9 Spry v. Logansport Loan & Trust Co., 191 Ind. 522, 133 N.E. 827 (1922).
10 For a discussion of specific examples of insane delusions see Vol. 1 Page on Wills (2d. Ed.) §155.
11 For tests based on evidence see Vol. 1, Page on Wills (2d Ed.) §153, §154, “Analysis of Insane Delusion.”
of his will testator disinherits his children because he believes that they are not his own, relying upon the persistent belief that his wife had been unfaithful to him. However, if there is the least indication that evidence exists upon which to base this belief it cannot be deemed an insane delusion. But, where testator disinherited his daughter after he had left his wife for many years after their marriage, declaring that he had left her because of her infidelity, it was held that this belief was an insane delusion in the absence of direct evidence to substantiate it. It has been held that a will is not invalid, for mental incompetency of the testator, merely because he believed that the contestant was not his son, in spite of the fact that for years he had treated and recognized him as his own son. And in Farmer v. Davis, where the testator distributed his property unequally among the natural objects of his bounty, because of prejudice or unfriendliness toward some and affection or friendship toward others, this did not establish that he labored under an insane delusion towards relatives as to whom slight or no provision was made. A case on record shows that a testatrix, when executing her will leaving the bulk of her estate to one of her two nieces, was laboring under an insane delusion that the other niece was guilty of theft from her, and for that reason excluded her from the will, but it was held that the will cannot be sustained. A grave difficulty presented by most cases of this nature is that the person who made the will, being dead at the time of probation, may have had some basis for his belief which is inevitably unknown to the court. It necessarily follows that insane delusions are often held to exist whereas in reality the testator could possibly have presented evidence of a rational nature as the basis of his beliefs.

13 Buford v. Greber, 228 Mo. 231, 122 S.W. 717; Haines v. Hayden, 95 Mich. 332, 54 N.W. 911; In re Shank's Will. 172 Wis. 621, 179 N.W. 747.
14 In re Russell's Estate, 189 Cal. 759, 210 Pac. 249. This case also points out a distinction between "delusion" and "insane delusion"; "a 'delusion' being a fixed belief that a theory is true which is not true or not true in the manner in which it is believed, and an 'insane delusion' being such a belief entertained without any basis in reason or evidence, and adhered to against reason and evidence." See, also, In re Struve's Estate, 279 Pac. 846 (Calif., 1929).
15 Miller v. Weston, 67 Colo. 534, 189 Pac. 610 (1920). As to how a testator's partial mental derangement toward a particular person might prevent a gift to such person, and yet not invalidate the will, see Stockhouse v. Horton 16 N. J. Eq. 202, 225. In connection with this case, see, Rood on Wills (2d Ed.) §135.
16 299 Ill. 325, 124 N.E. 640.
It is interesting, in discussing this subject, to note the manner in which a belief in Spiritualism will often times affect the testator’s testamentary capacity. When the validity of a will is attacked on the ground that the testator believed in communications with the spirits of the dead, the question may arise as to whether the testator when he executed his will was insane or whether the will was executed in consequence of undue influence. Generally a belief in Spiritualism is not held to be an insane delusion. But a person may believe to such an extent as to destroy his testamentary capacity. A person may think continually and persistently upon supposed communications, become a monomaniac, lose his power of reasoning properly on the subject and execute an invalid will. So while a belief in Spiritualism is not insanity, an actual monomania about Spiritualism will avoid a will, if it causes the testator to make a different disposition of his property than he would otherwise have made. In Bagwell v. Shanks it was held that when a person at the time of making a will is the victim of a delusion that she is in communication with and is guided and controlled by spirits, such delusion does not affect the validity of the will unless it influences her to make a disposition different from what she would otherwise make. However, belief in Spiritualism in the execution of wills is largely a problem of undue influence.

18 For a discussion on this point see Gardner on Wills §42. See, also, 63 Am. St. Rep. 72, in the note, page 93.
21 260 S.W. 222 (Texas, 1924).
22 Want of testamentary capacity and undue influence are distinct grounds on which a will may be impeached, since one may be competent to make a will and yet under such constraint as to vitiate the instrument executed. In re Bossom's Will, 186 N.Y.S. 782, 195 App. Div. 839.
cussion it is sufficient to say, in regard to this belief, that the courts seem to be unanimous in their decisions that a belief in Spiritualism is not in itself evidence of testamentary incapacity, if the testator, in making his will, is in no way influenced by his peculiar belief.

In regard to the question as to whether or not particular scribes as essential, or a specific insane delusion which affected the making of the will.” This presents a nice problem for discussion. In declaring that it is fallacious to say that a person is not suffering from an insane delusion because he does not, from a legal standard, conduct himself rationally in reference to his persistent beliefs, Wilbur, J., in the case of In re Allen’s Estate said: “... Insanity is one of the least understood of the ailments which afflict humanity. It is a fertile field for investigation, and happily is receiving that investigation at this time. If the legal definition of an insane delusion can be upheld at all on principle, it is because of the fact that the courts regard other forms of insane delusions, or of mental disease, as too difficult of proof as a basis for decisions by courts and juries. In that view, and in that view only, do I think that a legal definition of an insane delusion can be upheld on principle, and even in that case we ought not to close the door to such developments of modern research as may be able to make more certain proof of insanity.”

To view the principles involved in this subject dimly, but not inaccurately, it is observed that insane delusions and testamentary capacity may coexist. These delusions may not affect testamentary capacity and then again they may destroy it. If a testamentary disposition is made under the influence of an insane delusion, and reason and judgment are lacking, then the necessary testamentary power is lost, and consequently a will executed under those conditions should be declared void. But simply because the mind is subject to some delusion, it does not necessarily follow that the testator should be deemed not to possess testamentary capacity to dispose of his property, for the reason that the delusion may not exercise any influence whatever on the disposition and the will may be perfectly rational. Unless testa-

26 177 Cal. 668, 171 Pac. 686 (1918).
tor's dispositions of property in his will are connected in some way with his insane delusions such dispositions must be treated as valid, and the execution of his will judged as if he were sane. However, it is most important to observe that where the testamentary disposition is manifestly the fruit of an insane delusion such disposition must be regarded as being affected the same as if the testator were totally insane.

And so the affect of these phenomena on the execution of wills very generally gives rise to sad circumstances when the administration of justice has been had. True, the decisions of our courts are not infrequently met with disfavor on this subject, and perhaps justly so in many cases,—but nevertheless, the doctrines governing this matter must be strictly interpreted for the protection of the law of wills. In view of this principle, it is only in the case of a rationally executed will that the unfortunate consequences of proba- tion may be avoided.