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Decedents' Estates And Trusts—Mental Delusion as Basis For Testamentary Incapacity

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tiff's action for wrongful death and for pain and suffering of the decedent pending action by the Surrogate. Once the Surrogate determined to retain the plaintiff as administratrix or to appoint someone to replace her, the wrongful death and pain and suffering actions could continue.

This interpretation of the Surrogate's Court Act, Sections 43 and 99 through 101, brings about a desirable result. The administratrix receives no personal gain if she is retained as administratrix because any recovery on the action for wrongful death would go to the lawful widow or next of kin of the decedent,[6] and recovery in the pain and suffering action would go into the decedent's estate.[7] On the other hand, retention or replacement of the administratrix, as distinguished from dismissal of the action and revocation of the letters, can serve to save the cause of action, as it did in the instant case, where a dismissal would bar a subsequent action because of the statute of limitations.[8]

MENTAL DELUSION AS BASIS FOR TESTAMENTARY INCAPACITY

There can be no doubt that a testator has the right to dispose of his estate as he wishes and neither the reasonableness nor the justice of the disposal shall effect his determination. The law will, if there is no lack of testamentary capacity nor any showing of undue influence or fraud, expedite his wishes as he has decreed.[9] Where there is a showing, however, of testamentary incapacity which has affected a disposition made under the will, the law will not permit the will to be probated. The party making the claim of testamentary incapacity has the burden of proving it,[10] but once evidence has been produced which establishes an unsound mental condition which could have affected the disposition of the testator's estate, then the proponents have the obligation of providing a reasonable basis for the testator's belief. It is not necessary that testator be completely insane, if it can be shown that at the time of the making of the will he was laboring under a morbid delusion for which there was no reasonable basis.[11] Therefore, once evidence has been produced which allegedly establishes an unsound mental delusion and an explanation thereof has been offered, the issue of testamentary incapacity becomes a question of fact to be determined by the jury.

In the case of *In re Honigman's Will*,[12] the testator, in a will dated just one month before his death, left his wife only so much of his estate as he was required to by statute.[13] The wife contested the probate of the will on the grounds that the testator was suffering from a mental delusion, viz., that she

6. N.Y. Dec. Estate Law § 130.
7. N.Y. Dec. Estate Law § 120.
8. N.Y. Civ. Prac. Act § 20.
9. Clapp v. Fullerton, 34 N.Y. 190 (1866).
10. Dobie v. Armstrong, 160 N.Y. 584, 55 N.E. 302 (1899).
11. American Seamen's Friend Soc. v. Hopper, 33 N.Y. 619 (1865).
12. 8 N.Y.2d 244, 203 N.Y.S.2d 859 (1960).
13. N.Y. Dec. Est. Law § 18.

had been unfaithful to him, prior to the time of drawing the will. This she contended deprived him of the necessary testamentary capacity and affected the disposition of his estate under the will. The denial of probate of the will by the Surrogate Court was based on a jury finding that testator at the time of the drawing of the will was not of sound and disposing mind and memory. The Appellate Division reversed upon the law and on the facts.[14] The Court of Appeals reversed the decision of the Appellate Division upon a finding that the issue of testamentary capacity had been properly submitted to the jury and to overturn their finding would be to deprive the jury of its traditional function of passing on the facts. (Note: During the trial on the issue the wife was allowed to testify concerning a personal communication between herself (an interested party) and the deceased. Under Section 347 of the New York Civil Practice Act this testimony should have been excluded and its admission in evidence constitutes reversible error. The Court of Appeals, therefore, reversed and ordered a new trial.) A dissent in the Court of Appeals was based on a belief that the evidence as presented was not sufficient to establish a question of fact as to testator's testamentary incapacity.

On the issue of testator's testamentary capacity, in the present case, there was substantial competent evidence which indeed raised an inference that he was under a delusion at the time of the drawing of the will. There is no doubt that this delusion, viz., that his wife was unfaithful, had affected the disposition of his estate under the will. The proponents sought to answer these contentions in two ways, first, that there was a reasonable basis for the testator's belief and secondly, even if the testator were acting under a delusion, there were other valid reasons for the disposition he chose which would support the validity of the will. The evidence presented by the proponent on his first point presented a question of conflicting theories for the jury's determination, viz., was there a reasonable basis for testator's belief or was there not. This conflict was resolved by the jury in favor of the wife. Proponent's second argument was also rejected, for where it appears that a disposition under a will has been or might have been affected by a delusion then the will must be invalidated.[15]

SPECIFIC LEGATEE NOT ENTITLED TO INSURANCE PROCEEDS OF ADEEMED GIFT

According to the law of ademption as it exists today, if an article specifically devised is lost, stolen, destroyed, or substantially changed before the will of the testator takes effect, the article is adeemed and cannot pass by the will.[16] The fact that any of the above mentioned events take place with or without the consent or intent of the testator is immaterial.[17]

In the case of *In re Wright's Will*,[18] a diamond ring was specifically devised

14. 8 A.D. 969, 190 N.Y.S.2d 845 (2d Dep't 1959).
15. Supra note 11.
16. Atkinson, Wills 742 (2d ed. 1953).
17. In re Brann, 219 N.Y. 263, 114 N.E. 404 (1916).
18. 7 N.Y.2d 365, 197 N.Y.S.2d 711 (1960).