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HIGHLY ERRONEOUS BELIEFS DISTINGUISHED FROM INSANE DELUSIONS IN WISCONSIN

Testamentary incapacity, which will render the provisions of a will at least partially inoperative¹ if present at the time the will is executed,² consists broadly of two general types: non-age, and mental incapacity. The age requirement is statutory,³ and requires ordinarily that a testator attain majority before attempting to effect a testamentary disposition by will. However, there are exceptions for minor married women who are at least eighteen years of age, and servicemen of any age. Mental incapacity does not enjoy a similar simplicity. The applicable statutes⁴ require that the testator be "of sound mind," and go no further in the matter. Hence, for all practical purposes, the question of mental incapacity has been left entirely for judicial determination.

Mental incapacity is also divisible into two broad categories: general mental derangement and the insane delusion.⁵ General mental deficiency may be congenital or acquired after birth by sickness, injury, old age, etc. The Wisconsin Supreme Court began formulating a general test at an early date⁶ for this type of deficiency and it is interesting to note that little change has been wrought over the years.⁷ However, the modern version of the test is presented in this form:

" . . . the test of mental competency is whether the testator had sufficient active memory to comprehend, without prompting, the condition of his property, his relations to those who might be beneficiaries, and to hold these things in mind long enough to perceive their relations to each other and to be able to form some rational judgment in relation to them."⁸

¹ A scarcity of cases exist on this point. There is some authority for the proposition that where the insane delusions affect but a part of the will, the unaffected provisions should stand, 1 Page, WILLS §159 (3d ed. 1941); 57 AM. JUR., WILLS §87. No Wisconsin case expressly decides the issue, but in no case to date wherein the court found an insane delusion has any portion of the will been admitted to probate.

² Testamentary capacity must exist at the time the will is executed. If the testator lacked the requisite capacity prior to execution, but possessed it when the will was executed, the instrument is valid. Conversely, if testator had testamentary capacity prior to the making of the will, but lacked it at execution, the will is invalid. Where the testator becomes incapacitated subsequent to execution, the will is nonetheless valid. Estate of Wegner, 185 Wis. 407, 201 N.W. 826 (1925); Estate of Kesich, 244 Wis. 374, 12 N.W.2d 688 (1943), *aff'd in Will of Klagstad*, 264 Wis. Wis. 269, 58 N.W.2d 636 (1952); 1 Page, WILLS §111, and cases there cited.

³ Wis. STATS. (1955) §§238.01, 238.05.

⁴ *Ibid.*

⁵ 1 Page, WILLS §135; Atkinson, WILLS §51 (2d ed. 1953).

⁶ *E.g.*, see Holden v. Meadows and Others, 31 Wis. 284 (1872).

⁷ Holden v. Meadows and Others, *ibid.*; In the Matter of the Will of Sarah M. Blakely, 48 Wis. 294, 4 N.W. 337 (1880); *In re Michael Lewis's Will*, 51 Wis. 101, 7 N.W. 829 (1881); McMaster v. Scriven, 85 Wis. 162, 55 N.W. 149 (1893).

⁸ Will of Klagstad, *supra*, note 2.

There might be some reason to doubt whether or not this general test is applicable to insane delusions,⁹ particularly since a testator may very well not be incapacitated by any general mental deficiency which presumably would require a satisfaction of the formula, and yet the will may be denied probate on the ground that the testator lacked testamentary capacity by virtue of insane delusions.¹⁰ However, very respectable authority exists to the effect that the insane delusion is covered by the general test,¹¹ and it would seem to be of little more than academic interest in any event, since the Wisconsin Court has never applied this test as such to an insane delusion situation but rather promulgates more specific considerations as will be seen.

Insane delusions pose a difficult definitional problem. Bearing in mind that any definition will fall far short of conclusiveness, Professor Atkinson's relatively concise definition is felt to be useful as a starting point.

"An insane delusion must be one to which the testator adheres against evidence, argument, and reason. It is a belief, due to mental disease, in a state of facts which does not exist and which no rational person would believe to exist. It is not proper, however, to apply the test of whether an average or normal man would harbor the delusion. It is rather a question of whether the belief is so extravagant, fanciful or preposterous as to indicate mental disease. On the other hand, the belief need not be something impossible in the nature of things in order to constitute an insane delusion."¹²

Because of the difficulties experienced in attempting to clearly delineate the bounds of insane delusions, it is almost inevitable that related occurrences should, on occasion, become confused with the insane delusion.¹³ These related occurrences shall be termed highly erroneous beliefs for the sake of clarity in this article, although there has been no uniform terminology utilized by the courts. It will be the purpose of this article to ascertain the legal¹⁴ distinction between insane

⁹ In view of the dissenting opinion in *Will of Williams*, 186 Wis. 160, 202 N.W. 314 (1925); also see *Will of Lundquist*, 205 Wis. 667, 238 N.W. 861 (1931); *Will of Russell*, 257 Wis. 510, 44 N.W.2d 231 (1950). But see *Estate of Knutson*, 201 Wis. 526, 230 N.W. 617 (1930).

¹⁰ *Ballantine v. Proudfoot*, 62 Wis. 216, 22 N.W. 392 (1885); *Will of Elbert*, 244 Wis. 175, 11 N.W.2d 626 (1934); *Estate of Week*, 247 Wis. 197, 19 N.W.2d 184 (1944).

¹¹ *Will of Shanks*, 172 Wis. 621, 179 N.W. 747 (1920), *quoted in Will of Elbert*, *supra*, note 10; *Insane Delusion as Invalidating a Will*, 175 A.L.R. 885 (1948); Atkinson, WILLS §52.

¹² Atkinson, WILLS §52 at p. 244.

¹³ Confusion may arise because some of the courts speak of obsessions, hallucinations, monomania, and illusions, as synonyms for insane delusions; at other times, some of these same terms may refer to highly erroneous beliefs.

¹⁴ No attempt shall be made to consider the medical aspects or classifications. As stated by the court in *Will of McGovern*, 241 Wis. 99, at 106, 3 N.W.2d 717 (1942):

"In determining whether the testator was under the control of insane de-

delusions and highly erroneous beliefs in Wisconsin, in the various fields in which cases have arisen to date.

I. SCIENTIFIC BELIEFS

Although only one major Wisconsin case has evolved in this area, the *Chafin Will* case,¹⁵ it has been cited with such frequency and covers such a diversity of acts, that standing alone it is fairly adequate. The testator apparently harbored a rather high regard for his inventive ability. He felt that he could invent an instrument which would indicate the presence of valuable mineral deposits (this case was, of course, in the pre-uranium era); he persisted in attempts to contrive a machine which would defy the laws of nature by operating on a perpetual motion theory; and the testator expressed his desire to President Lincoln to develop some torpedoes or other instruments of destruction with which to demolish the Confederate fleets and armies. Nor was the testator's professed technical prowess confined to the practical level. He also argued that the sun revolved around the earth rather than the earth revolving on its axis; astronomical determinations of the distance from the earth to the sun were denied; and he thought that rain could be caused by the firing of cannons. All of these facts were held to constitute harmless erroneous beliefs in a well reasoned decision, in which Justice Lyon enunciated several fundamental principles by which erroneous beliefs and insane delusions can be separated.

"As a general rule the insane or partially insane do not reason upon the subjects of their hallucinations or delusions."¹⁶ Here, the testator's odd beliefs were all the result of reasoning. For example, he reasoned that the earth was not revolving because if an object is thrown directly overhead, it will return to its very spot of origin, therefore, the earth cannot be moving. His theory that rain could be caused by the firing of cannons was based upon his understanding that all the great battles in history had been followed by precipitation. And so it proceeded with all of his beliefs. "His premise was correct, but his conclusions therefrom erroneous."¹⁷

Secondly, it is generally impossible ". . . to convince the insane of the absurdity of their delusions by any arguments or actual tests, however conclusive they may be to a person of sound mind."¹⁸ In the instant case, the testator would readily abandon any of his somewhat unusual theories when a practical test demonstrated their error.

lusions or obsession no confusion need arise from the opinion of experts regarding the exact nature of the mental disorder; it is not the function of the court as a trier of fact to diagnose the exact nature of the mental disease or incapacity but to determine whether such incapacity did in fact exist and if so whether it was such as to prevent testator from drawing the will."

¹⁵ 32 Wis. 558 (1873).

¹⁶ *Id.*, at 566.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

The final guide proffered by the Court is probably of less value than the prior two, but is, nonetheless, worthy of note:

"The really insane are usually subject to sudden changes from one delusion to another. True, this does not always happen, but where the patient is suffering under a settled, long continued delusion, there will seldom be any difficulty in ascertaining whether it is really an insane delusion, or merely an erroneous opinion based upon false reasoning or insufficient evidence. If a man really believes that he is made of glass, or that he is the Christ, or that he is dead, and persists in the opinion, we readily conclude that he is the victim of hallucination or insane delusion, because such opinions are inconsistent with the condition of sanity. But we can draw no such conclusion from the mere belief in witches, ghosts, dreams or spiritual manifestations, or in strange and absurd views on scientific or religious subjects, because such opinions are consistent with sanity. We must find stronger evidence than these of a diseased mind, before we can pronounce the man insane who believes in these absurdities."¹⁹

This pronouncement would seem to be of dubious value in distinguishing insane delusions from highly erroneous beliefs in the event of a consistent, long continued belief, since in effect the court is saying that these are examples of insane delusions because they are insane delusions. Furthermore, it is doubtful if the specific examples presented can be relied upon to be insane delusions even if one of them should arise in an actual case. In order for a belief to constitute an insane delusion, it is necessary that it materially affect the will, i.e., that the will would have been different but for the insane delusion.²⁰ It is difficult, therefore, to imagine a highly erroneous scientific belief which might constitute an insane delusion in that it is unlikely that any such belief would materially influence the testator in his dispositive scheme unless he willed a share of his estate in the furtherance of some absurd idea.

II. SPIRITUALISM

The testator in *Will of J. B. Smith*,²¹ professed a belief in mediums and communications with the other world. He claimed to have contacts from his deceased wife on a few occasions, and made some grain investments based upon information from the other world. He also

¹⁹ *Id.*, at 566-567.

²⁰ *Will of Shanks*, *supra*, note 11: "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 (*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? If that is reasonably certain, then mental capacity is sufficiently shown to invalidate the will made." Quoted in part in *Will of Ebert*, *supra*, note 10.

²¹ 52 Wis. 543, 8 N.W. 616 (1881).

preferred news of current events via the medium circuit rather than newspaper accounts. In the trial court, a jury found the testator laboring under insane delusions, but the Supreme Court set aside this finding as against the clear preponderance of evidence. There were two key factors which apparently led the court to this result. The testator believed that there were two kinds of spirits—good spirits, and bad spirits. He had a novel, but effective means of distinguishing the two: if the spirit agreed with the testator's feelings on the subject, it was a good spirit; if not, it was a bad spirit. Hence, it would seem that his belief in spirits actually had little influence on him, since even in their absence he undoubtedly would have done the same things. As such, these convictions lacked the materiality element which must accompany an insane delusion. Secondly, once the newspaper accounts became reasonably certain, he would accept their validity over the information received from the mystical couriers. The court emphasized the significance of this fact, and it seems extremely similar to one of the premises of the *Chafin* decision.²²

The *Chafin Will Case*, *supra*, also involved some spiritualistic aspects. There the testator expressed faith in clairvoyants, fortune-tellers, mediums, impressions derived from dreams, and witchcraft; and induced by the influence of some of these, he journeyed into New York, Pennsylvania, Michigan and Iowa in search of valuable minerals and hidden treasures. The court quite summarily pronounced these absurdities not to constitute insane delusions, because opinions of this nature may be consistent with sanity.

Actually, there is little more the court could have done. It is a field dominated by speculation and is not susceptible of adequate proof or contradiction.²³ A belief can not be a delusion if in accord with reality, and who is to establish reality in this realm? Consequently, spiritualistic beliefs must, in all but the most unusual cases, be afforded a legal sanctuary from the insane delusion attack.²⁴

III. DOMESTIC CONFLICTS

Imputations of unchastity and illegitimacy. There is only one case in Wisconsin wherein the testator declared his wife unchaste and his children illegitimate, in which the court upheld the validity of the will.²⁵ Apparently there was a total lack of evidence on the subject.

²² *Supra*, note 18.

²³ 1 Page, WILLS §149, states: "No good reason can be given for the contention that a belief of this sort establishes insanity. Such a belief is often based upon evidence of some sort, and while this evidence might not convince most persons, a belief which is based thereon can not be classed as an insane delusion. Where not based on evidence of some sort, a belief of this character involves questions of abstract speculation upon which evidence is not obtainable; and a belief of this sort can not be classed as a insane delusion."

²⁴ 175 A.L.R., *op. cit.*, *supra*, note 11, at 944; 57 AM. JUR., WILLS §86.

²⁵ *Chafin Will Case*, *supra*, note 15.

The court stated that there was a presumption of chastity and legitimacy, but then completely emasculated the presumption by hypothesizing that there may have been some facts and circumstances which lead the testator to this belief and since this possibility was not negated, it would not do to find the existence of an insane delusion. This result would seem to be legitimate, but upon a different rationale. There would be in such a case, conflicting presumptions: on the one hand, there is the presumption of chastity and legitimacy; on the other, there is a presumption of sanity and testamentary capacity,²⁶ with the burden upon the contestant to overcome that presumption by clear, convincing, and satisfactory evidence.²⁷ It would seem, therefore, that where no evidence is introduced upon the matter, that the contestant has not met his burden of proof, and the will should stand notwithstanding the presumption detrimental to the cause of the proponents.

In *Will of Behm*,²⁸ the court acknowledged the presumption of the validity of the will, but held that the presumption could be overcome by evidence that the imputations were wholly groundless and false, which is certainly not inconsistent with the previous case. An even stronger case for insane delusions was presented in *Will of Ebenezer W. Cole*,²⁹ wherein the charges were once again utterly groundless and false; and quite significantly, no reasoning or expostulation could shake the testator's belief. Although the absence of any attempt to contradict the testator's groundless suspicions of his wife's infidelity would quite obviously not be fatal to the presence of an insane delusion in view of the *Behm* case, *supra*, its presence would presumably greatly aid the contestant in establishing the presence of an insane delusion.³⁰

Undoubtedly, *Will of McGovern*,³¹ is the leading Wisconsin case in the field presently under consideration. The testator was suffering from a sexual neurasthenia prior to his marriage to a young lady some thirteen years his junior. However, within a few weeks after the marriage, he overcame the impediment and consummated the marital relation. Shortly thereafter, the testator began to accuse his wife of infidelity although her conduct had been above reproach and her reputation was unimpeachable. A child was born, but the testator denied his paternity because the infant had red hair whereas no member of his family had ever had red hair. The accusations continued, and testator's actions became more radical. At night he would inspect the house in search

²⁶ Estate of Bickner, 259 Wis. 425, 49 N.W.2d 404 (1951), quoted in Estate of Bauer, 264, Wis. 556, 59 N.W.2d 481 (1952), and cases there cited.

²⁷ Estate of Bickner, *supra*, note 26, quoted in Will of Wright, 266 Wis. 89, 62 N.W.2d 409 (1953).

²⁸ 187 Wis. 10, 203 N.W. 718 (1925).

²⁹ 49 Wis. 179, 5 N.W. 346 (1880).

³⁰ Chafin Will Case, *supra*, note 18.

³¹ *Supra*, note 14.

of his wife's hidden lovers, and on one occasion drove a young man from his office apparently because testator believed him to be the father of his child, although the bewildered victim had escorted testator's wife neither before nor after her marriage. Subsequently, his wife became pregnant again, but the testator persisted in his belief of impotency. Eventually, the young mother could endure no more and took her child to live in an environment isolated from the rantings of the testator. Upon these facts, the court had little difficulty in determining that the testator was suffering from insane delusions. The accusations were shown to be utterly groundless and false. A priest, the brother of the testator's wife, tried to reason with testator, but to no avail. The court also launched into an attack upon the testator's reasoning, which adds an important qualification to the rule that the deluded person does not reason upon the subject of his delusion:³²

"If testator had reason to believe he was sterile his belief that the child was not his would have some basis to rest upon but an inability to refrain from believing in the existence of a certain fact when it is known not to exist must come from 'an uncontrollable urge to follow a thought' disregarding all existing facts. If a man says that he cannot raise his right hand and then proceeds to raise it, he is fooling or, if he still believes that he cannot do it the obsession is controlling him. No other man had access to testator's wife. She became pregnant twice. The existence of these facts take testator out of the class of impotents and places him in the class of those controlled by an obsession."³³

An interesting materiality question was also posed by the *McGovern* case. The contestant — testator's red haired child — was visited by testator on only two occasions, both of which resulted in a display of mutual indifference. The trial court grasped this facet of the relationship as evidence that the testator was not influenced by his erroneous belief, but rather disinherited the contestant simply because any vestige of parental affection which might have prompted the testator to provide for his child was lacking. The Supreme Court, however, probed more deeply into the causal connection, and concluded that the indifference was the result of the illegitimacy charge, and, therefore, the insane delusion did ultimately affect the testator's disposition.³⁴

³² Chafin Will Case, *supra*, note 16.

³³ Will of McGovern, *supra*, note 14, 241 Wis. at 109.

³⁴ The court stated: "As in the beginning the obsession was sufficient to cause the testator to indulge in such a course of conduct as to drive the normal objects of his affection from his home, so it stood through the years as a barrier to any hopes of reuniting the ties of fatherhood, and at the close of his life this obsession compelled testator to deny, by the very silence of his will, rights to the one whose claim was the greatest to his affection, his own daughter, and whose claim he would doubtless have recognized at the time he wrote the letter in 1927 had he been able to control the obsession." *Id.*, at 111.

Hence, it seems clear that the requisite causal connection need not be immediate, and something in the nature of a chain of causation will suffice.

Two interesting deviations appear in *Will of Shanks*.³⁵ Once again the testator's charges of infidelity to his spouse were utterly groundless; but in addition thereto, the gentleman which testator selected as his wife's partner in iniquity, was himself of unquestionable integrity and virtue—a fact which seemed to have had no little influence on the court. Thus, where the testator specifies the allegedly nefarious third party it would seem that evidence of his moral timber might be useful in overcoming the presumption favoring testamentary capacity. The testator, however, attempted in his will to correct his slanderous errors. He stated that the charge was made in a fit of anger, was not true, and an apology therefor was offered.³⁶ The court discounted this attempt to eradicate the insane delusion:

“Were it not for the well known propensity of insane persons, or those suffering from insane delusions, to negative their true state of mind or to be unaware of it, more importance might be attached to the statement in the will.”³⁷

Allegations of criminality. The problem here is very similar to that encountered in allegations of unchastity and illegitimacy. In *Estate of Week*,³⁸ the testatrix wrote several letters suggesting that somebody was stealing from her, but the suspected party was never disclosed. There was an absence of evidence on the matter. As a result, the court decided that the testatrix may or may not have had adequate reasons for her suspicion. In such a state of affairs, the contestant failed to meet his burden of proof, and the will should be admitted to probate.

Where there is some evidence that the testator's beliefs are groundless and false, and particularly where the testator cannot be reasoned out of his belief, then the court seems to readily find an insane de-

³⁵ *Supra*, note 11.

³⁶ The testator interjected the following statement in his will: “I have always been a man of violent temper and a jealous disposition. That some time in the fall of 1918 I became very angry with my wife and in the heat of temper wrongfully accused her of infidelity. I was sorry that I did this and immediately told her that I did not believe such things, and I wish it to be understood in this my last will and testament that such statements were made while violently angry and jealous, and I am sorry that I made those statements. I wish to further state that I have no feeling of enmity or jealousy against my good wife, and that when my temper sufficiently cooled I knew that I had wrongfully accused her, and wish to state that I believe her to be perfectly honorable and a good, virtuous wife, and that my feelings towards her are in no way bitter at this time, and I have tried by this will to properly take care of and leave enough to protect her as long as she shall live.” *Id.*, 172 Wis. at 623-624.

³⁷ *Id.*, at 624.

³⁸ *Supra*, note 10.

lusion.³⁹ Conversely, where there is some evidence to support the testator's belief, then it is difficult if not impossible to show an insane delusion. In the *Estate of Bickner*,⁴⁰ the testator watched the contestants remove some of his property under somewhat ambiguous circumstances. Presumably, the property was in fact a gift, but the court felt that there was some basis for the testator to believe it was being stolen. The significance of this element was portrayed by the court's quotation from 68 C. J., *Wills*, p. 433 sec. 30:

"... a mere mistaken belief or an erroneous or unjust conclusion is not an insane delusion if there is some foundation in fact or some basis on which the mental operation of the testator may rest, even though the basis may be regarded by others as wholly insufficient. Similarly, even though the testator may be in error in his reasoning, undue or unnatural prejudice or aversion, if based on any kind of reasoning is not an insane delusion."⁴¹

If taken literally, this edict might well lead to a precarious position. If any sort of basis will suffice, then presumably even a basis which only an insane person would accept would endow the person with testamentary capacity, which would indeed be a strange anomaly. The Court subsequently quotes⁴² from Page's treatise⁴³ which seems to limit the operation of this principle to situations where a sane person might draw the same conclusion as did the testator.⁴⁴

The question of materiality is pertinent to this category of insane delusions, as it is to any other. However, the court manifested some liberality in this area by indicating that if there is a groundless allegation of criminality, an estrangement between the testator and the individual charged, and no other grounds are shown to explain the alienation, then it will be assumed that the insane delusion was the cause thereof.⁴⁵

Personal aversion. In an early case⁴⁶ in which the testatrix conceived a groundless antipathy for her husband, the court apparently conceded to the testatrix the right to like or dislike anyone, with or without any reason, with no fear of such action being labeled an insane delusion.

This early approach seemed to be discredited—at least by in-

³⁹ Will of Ebenezer W. Cole, *supra*, note 29.

⁴⁰ *Supra*, note 26.

⁴¹ *Id.*, 259 Wis. at 432.

⁴² *Id.*, at 433.

⁴³ 1 Page, WILLS §144: "In order to be an insane delusion the mistake must be one which is not based upon evidence; or at least without any evidence from which a sane man could draw the conclusion which forms the delusion."

⁴⁴ To similar effect, see 175 A.L.R., *op. cit.*, *supra*, note 11, at 914.

⁴⁵ *Ballantine v. Proudfoot*, *supra*, note 10; Will of Elbert, *supra*, note 10.

⁴⁶ In the Matter of the Will of Sarah M. Blakely, *supra*, note 7.

ference—in *Estate of Boston*,⁴⁷ where the testator eliminated his daughter from his will because of a fairly senseless, typical quarrel involving the services of a carpenter. Here there were circumstances explaining the testator's move, and this was held to be fatal to the presence of an insane delusion, even though the cause of the conflict was at best trivial. However, the court suggested that the result might be different if there were no reasons at all to explain the aversion.⁴⁸

In a subsequent holding,⁴⁹ the situation was clarified by a reversion to the early rule, although the case did involve a dispute which was anything but groundless. In short, any attempt to convert personal aversion into an insane delusion might well encounter extreme difficulty even though there is either no demonstrable basis or no adequate foundation for the antipathy.⁵⁰

IV. WILL PROVISIONS

Unnatural wills. Every insane delusion situation involves an unnatural will in a sense, in view of the materiality requirement. That is, the will must to a degree be the product of the insane delusion, and as such, it is unnatural.

If there exists some reason aside from the insane delusion to account for the challenged distribution, the validity of the instrument will be upheld.⁵¹ Probably the reason must be a sensible one,⁵² but clearly that does not require the facts supporting the testator's belief to be true in fact.⁵³ Several cases indicate that a reason must be found in order to avert the likelihood of a successful insane delusion attack,⁵⁴

⁴⁷ 253 Wis. 8, 33 N.W.2d 257 (1947).

⁴⁸ "While the circumstances which apparently prompted his change of attitude toward Thada are trivial, they serve to explain his change of mind in that regard. Whether or not he was fair or right in his estimate of the worthiness of the Warners to be beneficiaries after the September transactions, the essential fact is clear that when he dictated and later executed his last will his attitude was not so without reason as to amount to a delusion or obsession. Having the capacity, he had the right to dispose of his property as he pleased." *Id.*, 253 Wis. at 13-14.

⁴⁹ Will of Russell, *supra*, note 9.

⁵⁰ The court quoted 1 Page, WILLS §146, which upholds this position, but did so only in part, to wit: "The fact that testator dislikes certain of the natural objects of his bounty does not establish an insane delusion; even if such dislike is based upon some reason, although it may be an unjust one." *Id.*, 257 Wis. at 522-523. However, it is felt that even the abridgment utilized by the court supports the suggested contention.

⁵¹ Chafin Will Case, *supra*, note 15; Will of J. B. Smith, *supra*, note 21; Estate of Wegner, *supra*, note 2.

⁵² Will of Garrecht, 195 Wis. 596, 219 N.W. 378 (1928).

⁵³ Will of Lundquist, *supra*, note 9; Estate of Bauer, *supra*, note 26.

⁵⁴ Estate of Boston, *supra*, note 47; Will of Williams, 256 Wis. 338, 41 N.W.2d 191 (1949). In Will of Lundquist, *supra*, note 9, 205 Wis. at 676, the court emphatically declared: "There is nothing in the record which reasonably justifies her hatred of her husband's brothers; nothing to show that her obsessions as to them had any basis in fact; nothing on which to base her judgment that they coveted her property, desired her to make a will in their favor, or that they would get it away from her husband in case she left it to him outright; noth-

but mere favoritism of one expectant heir over another will suffice.⁵⁵

As previously noted, the contestant has the burden of proving the insane delusion by clear, satisfactory, and convincing proof. Where the evidence extrinsic to the will is insufficient to demonstrate the insane delusion, the contestant ought to be able to utilize any unnatural provisions in the will in furthering his claim.⁵⁶ Consequently, in a close case the unnaturalness of the will might well be the determining factor.

The Court, on occasion, has stated that the justice of the will should not influence the court in its determination.⁵⁷ It is doubtful if this amounts to any more than lip service of the weakest variety. By emphasizing the importance of some reason to explain what might otherwise be considered an unnatural will, the court is at least indirectly suggesting that the justice of the will is a valid consideration.⁵⁸ But this conclusion is not based upon indirection alone. Numerous cases speak of the justness of the will in unmistakable language, and appear to impart great significance to it.⁵⁹

Incoherent wills. If the testator were under the influence of an insane delusion, it would be entirely possible for his incapacitating condition to manifest itself upon the face of the will itself. The testator in *Evenson v. Rust*⁶⁰ provided that the residue of his estate was to be divided equally between *A* and *B* or their heirs, and *C* and *D*, or their heirs. The alleged peculiarity of this provision lay in the fact that *A* had not only predeceased the testator, but had in fact died prior to the execution of the will. In view of other weighty evidence which established the mental capacity of the testator, the court felt that testator may have considered the utilized language more convenient than a specific designation of *A*'s heirs, which would not be inconsistent with a perfect awareness of *A*'s death and hence not necessarily indicative of any delusion.

*Will of Jacobson*⁶¹ involved a more complex fact situation. The testator apparently feared that his divorced wife would in some manner acquire a share in his estate unless he precluded such an undesirable

ing, of course, to show that they would get it away from him in some manner even if she left him only a life estate therein."

⁵⁵ Will of Emerson, 183 Wis. 437, 198 N.W. 441 (1924); Will of Truehl, 220 Wis. 137, 264 N.W. 254 (1936); Will of Russell, *supra*, note 9. But see Will of Behm, *supra*, note 28.

⁵⁶ Will of Emerson, *supra*, note 55, 183 Wis. at 445; "When the evidence as to lack of mental capacity or the exercise of undue influence is not clear and satisfactory, the fact as to whether the will may be termed a natural one is of great significance." 57 AM. JUR., WILLS §83.

⁵⁷ In the Matter of the Will of Sarah M. Blakely, *supra*, note 7, 48 Wis. at 301; Estate of Bickner, *supra*, note 26, 259 Wis. at 433.

⁵⁸ *Supra*, notes 51, 52, and 54.

⁵⁹ Will of Shanks, *supra*, note 11; Estate of Knutson, *supra*, note 9; Will of Lundquist, *supra*, note 9; Estate of Bauer, *supra*, note 26.

⁶⁰ *Evenson v. Rust*, 152 Wis. 113, 139 N.W. 766 (1913).

⁶¹ Will of Jacobson, 223 Wis. 508, 270 N.W. 923 (1937).

result by testamentary maneuvers. Therefore, the testator provided in his will that his daughter, Joyce, and son, Marion, were to receive the income from his property — but only after his wife's death. The contestants offered the testator's misconception of his divorced spouse's interest in his estate as evidence of an insane delusion, but the effort proved futile. "Erroneous views of the law are not 'delusions' such as to void wills. A 'delusion' such as to void a will must be 'insane delusion'."⁶² Coupled with the testator's erroneous legal view was a will studded with confusion. After misspelling the son's name, the will went on to provide:

" . . . and at the death of either of my *daughters*, the one-half of my said property shall be equally divided between their children, share and share alike, so that the children of Joyce Ferguson receive one-half of my said estate and the *children of Marian Jacobson* receive one-half of the estate, the corpus of said estate to be divided between and vest in my said grandchildren within twenty-one (21) years from the death of their said *mothers*."⁶³ (emphasis added).

In short, there were four rather glaring errors appearing in the will. The court found a satisfactory explanation in every instance. Testator had two wills drawn. The first scrivener apparently inferred that testator had two daughters rather than one daughter and one son, and hence spelled the son's name "Marian," in the feminine, rather than "Marion" as used for the masculine gender. By inadvertance, the testator missed this error which in turn mislead the second scrivener who drew the contested will, although the latter was cognizant of the true situation. Testator desired the remainder to vest in his grandchildren, which were the children of the daughter only since the son was without issue. The court was of the opinion that the testator and the scrivener were concentrating on this objective, and as a result the errors ("daughters" was used instead of "children"; "mothers" instead of "parents") escaped unnoticed.

Quite possibly these cases raise more problems than solutions. One thing seems clear — in view of the courts success in explaining the misleading phraseology in the testamentary instrument — it is unlikely, at least in the absence of a highly peculiar will, that an incoherent will standing alone would be sufficient to convince the court that the testator was disabled by any insane delusions. However, it would seem reasonable to presume under the *Evenson* decision,⁶⁴ that in a close case evidence of an incoherent will would attain considerable importance.⁶⁵ As yet, no case has arisen in Wisconsin in which the will displays the

⁶² *Id.*, 223 Wis. at 511.

⁶³ *Id.*, at 512-513.

⁶⁴ *Supra*, note 60, at 115.

⁶⁵ 175 A.L.R., *op. cit.*, *supra*, note 11, at 970.

same erroneous belief as that demonstrated by the testator outside of the will. Hence, the effect of such an eventuality can scarcely escape the confines of mere conjecture, but it is difficult to imagine the testamentary provisions being unimportant in such a case.

V. ECCENTRICITIES

Eccentricities are deviations from normal conduct or behavior. In a sense, therefore, both insane delusions and highly erroneous beliefs might well be considered eccentricities in every instance; but eccentricity, as here used, is limited to the ordinary connotation of the term and excludes the matters previously examined.

Eccentricities per se do not amount to insane delusions.⁶⁶ Simply because the testator was immoral,⁶⁷ or beat on the fence with a stick, or occasionally awoke the family to inform them of the presence of a non-existent person,⁶⁸ or was subject to frequent crying and laughing spells,⁶⁹ or talked to himself, or poked imaginary people out of a tree with a stick,⁷⁰ or was abusive and cruel towards his animals or imagined noises, or was forgetful,⁷¹ does not establish the existence of an insane delusion. As stated in the *Will of Russell*:

"Every person has slight peculiarities of his own, which never cause any suspicion of his testamentary capacity. It is only when they become pronounced by contrast with those about him that they become known as eccentricities, and are invoked to discredit his testamentary capacity. Eccentricity has no effect on testamentary capacity; and wills of persons who are highly eccentric, and in some cases eccentric to the verge of insanity have been upheld. This is especially true where eccentricity is due, not to any form of mental derangement, but to vanity, selfishness and the like. . . ."⁷²

Nor are the infirmities of old age,⁷³ or physical afflictions,⁷⁴ or criminal responsibility,⁷⁵ or contractual incapacity⁷⁶ to be confused with insane delusions. The former may well exist in the absence of the latter.

Although eccentricities in and of themselves are insufficient to

⁶⁶ 1 Page, WILLS §148; 94 C.J.S., WILLS §22.

⁶⁷ Will of Golz, 190 Wis. 524, 209 N.W. 704 (1926).

⁶⁸ *In re Butler's Will*, 110 Wis. 70, 85 N.W. 678 (1901).

⁶⁹ In the Matter of the Will of Sarah M. Blakely, *supra*, note 7.

⁷⁰ Estate of Wegner, *supra*, note 2.

⁷¹ Estate of Knutson, *supra*, note 9.

⁷² *Supra*, note 9, at 523.

⁷³ Estate of Wegner, *supra*, note 2; Will of Williams, *supra*, note 9; Will of McLeisch, 209 Wis. 417, 245, N.W. 197 (1932); Will of Jacobson, *supra*, note 61; Will of Washburn, 248 Wis. 467, 22 N.W.2d 512 (1945); Estate of Bauer, *supra*, note 26.

⁷⁴ Estate of Bean, 159 Wis. 67, 149 N.W. 745 (1914); Will of Jacobson, *supra*, note 61; Will of Szperka, 254 Wis. 153, 158, 35 N.W. 209, 911 (1948) (1949).

⁷⁵ 1 Page, WILLS §129.

⁷⁶ 1 Page, WILLS §131.

establish the presence of an insane delusion, they are, of course, pertinent evidence as regards general testamentary incapacity.⁷⁷

VI. CONCLUSIONS

Falsity is, of course, a *sine qua non* of the insane delusion. But in and of itself, falsity is of no particular value in distinguishing an insane delusion from a highly erroneous belief since falsity is but the genus of which both are species.

In the event the incorrect conclusion has some basis in fact or is the product of a reasoning process, the belief is then merely erroneous and not an insane delusion.⁷⁸ However, the purported rationale probably must be coherent, that is, a logical error rather than an absurd deduction;⁷⁹ and it is likely that the basis or foundation for the belief must be of some sensible substance to qualify as a highly erroneous belief.⁸⁰ Some caution must be exercised in applying this differentiating element since there are fields such as abstract speculations⁸¹ or personal aversions,⁸² which by their very nature either defy the application of this particular test, or at least render its value questionable.

If there was an attempt to rebut the fallacious conviction, it is of considerable importance since a refusal to reject a demonstrated error is indicative of an insane delusion.⁸³ Unfortunately, evidence of this nature is frequently unavailable where the belief escapes the confines of any realistic semblance because few would venture to undertake such a hopeless task — but presumably if the case were that patent, the contestant should be able to successfully establish the insane delusion without it. On the other hand, the likelihood of an attempted rebuttal of the erroneous view should be much greater in a close case, wherein evidence of this factor might more significantly contribute to the contestant's cause.⁸⁴

Notwithstanding all of the previously mentioned considerations, there remains one element whose presence is indispensable to the existence of an insane delusion — materiality.⁸⁵ Even though the belief was obviously false, foundationless, and irrebuttable, if it failed to affect the testamentary disposition it could not qualify as an insane delusion and would have to be discarded as a harmless, highly erroneous belief, although, of course, it would be pertinent evidence on the question of general mental capacity.⁸⁶

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⁷⁷ Will of Williams, *supra*, note 9; Atkinson, WILLS, §52; 1 Page, WILLS, §148; 94 C.J.S., WILLS §22.

⁷⁸ *Supra*, notes 16, 41, 47 and 51.

⁷⁹ *Supra*, notes 43 and 44.

⁸⁰ *Supra*, notes 34, 43, 44, and 52.

⁸¹ *Supra*, notes 23 and 24.

⁸² *Supra*, notes 46, 49 and 50.

⁸³ *Supra*, note 18.

⁸⁴ *Supra*, note 30.

⁸⁵ *Supra*, note 20.

⁸⁶ *Supra*, note 77.