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WILLS—INSANE DELUSIONS RESPECTING MEMBERS OF THE FAMILY AND HEIRS AT LAW

Although the right to pass title to property by will is governed by statute, the Wisconsin Statutes say nothing more of the mental requisites for testamentary disposition than that the testator be "of sound mind." The legislature has left to the courts the determination of what shall constitute sufficient mental capacity for the disposition of property by will. The test of general mental capacity in Wisconsin was laid down by Mr. Justice Winslow in the Butler Will Case, as follows:

"Did he have sufficient active memory to collect in his mind, without prompting, the condition of his property, his relations to his children and other persons who might properly be his beneficiaries, and the scope and bearing of his will, and to hold these things in his mind a sufficient length of time to perceive their obvious relations to each other and be able to form some rational judgment in relation to them?"

However, while a testator may meet all of the requirements laid down by the foregoing test, he may nevertheless be held to be incapacitated as a result of what the courts have termed an insane delusion.

Insane delusion has been variously described as "partial insanity", "monomania", and "paranoia". The insane delusion is frequently the only symptom of insanity, and is confined to a clearly marked set of subjects. Monomania is defined as "insanity upon a particular subject only, and with a single delusion of the mind." From a psychologist's point of view both of the terms, "monomania" and "partial insanity", are objectionable in that they imply the discarded compartment theory of the mind; namely, that a person may be insane on one subject only. The present view of psychologists is that monomania is

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1 Wis. Stats., Sec. 238.01: "Who may devise lands, etc. Every person of full age and any married woman of the age of 18 years and upward and any other minor who is a member of the military or naval forces of the United States, being of sound mind, seized in his or her own right of any lands or of any right thereto or entitled to any interest therein, descendent to his or her heirs, may devise and dispose of the same by last will and testament in writing; and all such estate not disposed of by will shall descend as the estate of the intestate, being chargeable in both cases with the payment of all his or her debts except as provided in the next preceding chapter and in section 238.04."

2 In re Will of Butler, 110 Wis. 70, 85 N.W. 678 (1901).


rather a type of insanity which affects the whole mind but manifests itself only upon certain subjects. The courts have not particularly concerned themselves with the changing theories of the psychologists and continue to use expressions indicating a retention of the compartment theory for purposes of the Law of Wills; namely, that a man may be insane upon one subject only.\(^5\)

Paranoia is "chronic delusional insanity. It is the form of insanity charaterized by systematized delusions. A systematized delusion is one based upon a false premise, pursued by a logical process of reasoning to an insane conclusion. It is one central delusion around which the other abberations of mind converge. Paranoia is now regarded as a more accurate term than monomania or partial insanity."\(^6\)

While the classification of the mental conditions of individuals has been of undoubted value in the field of psychology, scholastically and therapeutically, such classification of the symptoms of a testator has not been deemed material in the investigation of testamentary capacity. In a recent case the Wisconsin Court said:

"In determining whether the testator was under the control of insane delusions or obsessions 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."\(^7\)

The question is not whether the testator's case fitted into a certain set of symptoms indicative of a recognized mental disease, but rather whether words and acts indicated an uncontrollable urge to follow a thought and whether such thought was continuously present.\(^8\)

Insane delusions respecting members of the family and heirs at law arise in a number of ways. A common type of delusion is the

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\(^6\) Ibid., at p. 293.
\(^7\) Will of McGovern, 241 Wis. 99, 3 N. W. (2d) 717, (1942). In this case an expert summoned by contestant testified that in his opinion testator was suffering from a mixed psychoneuroses and was subject to an obsession or an uncontrollable urge to follow a thought or do an unnecessary action, and such obsession was continuously present and was therefore characterized as systematized, that is, always the same. Although the court stated it would not be controlled by the terminology of the psychologist, it did adopt the language of the expert when it said: "... 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 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 takes testator out of the class of impotents and places him in the class of those controlled by an obsession."
\(^8\) Ibid.
testator’s belief that his wife has been unfaithful to him and that the issue of the marriage are not his.9 Dispositions of property have also been found to have been affected by delusions that the children have stolen property of the testator,10 that they were attempting to poison the testator,11 and that they were immoral.12 The contention that testator was suffering from insane delusions respecting members of the family has been defeated (in spite of a showing of eccentricity on the part of the testator) where there appeared to have been grounds for his disinheritance of his children: such as, (1) the entry of the children on a criminal course of life, and business difficulties between the children and the testator;13 (2) failure of the children to repay debts, and the feeling on the part of the testator that they had been properly taken care of during testator’s life,14 and, (3) where the testator had actual knowledge of his wife’s infidelity, as an admission by her to a witness who had testified in divorce proceedings that she had committed adultery many months before the child was born.15

In Will of McGovern,16 a recent and leading Wisconsin case on insane delusions respecting heirs at law, the testator, a country doctor, died in 1941, having executed a will two years prior to his death, whereby he devised and bequeathed all his property to his nieces and nephews. He had married Hannah Franke in 1913. A short time after his marriage he began to accuse his wife of being sexually abnormal and of being intimate with three or four men in the village. A daughter, Mary, was born in 1915. The doctor summoned for the delivery did not reach the home in time and testator himself delivered the infant. He signed the birth certificate stating that he was the father of the child. The morning after the birth of the child testator refused to recognize her as his own. He declared that she resembled one of the men in the village, that she had red hair and that no member of the McGovern family had red hair. After three days, testator dismissed the attending

9 Will of McGovern, supra, where testator disinherited his only child whom he believed to be illegitimate; Will of Behm, 187 Wis. 10, 203 N.W. 718 (1925), where testator believed six of his eight to be illegitimate, and left all of his property to one whom he believed legitimate; Will of Shanks, 172 Wis. 621, 179 N.W. 747 (1920), where the testator had no children, but left his wife less than the court felt he should have in view of his insane delusions; Buford v. Gruber, 223 Mo. 231, 122 S.W. 717 (1909), where the testator disinherited one of his children in the belief that his wife had been unfaithful; Petefish v. Becker, 176 Ill. 448, 52 N.E. 71 (1898), where testator had formed a belief that his son was illegitimate, but there was no evidence that he believed his wife to have been unfaithful.10 Will of Elbert, 244 Wis. 175, 11 N.W.(2d)626 (1943); Estate of Knutson, 201 Wis. 526, 230 N. W. 617 (1930).11 Ballantine, Ex’r, etc. v. Proudfoot, 62 Wis. 216, 22 N.W. 392 (1885).12 Rivard v. Rivard, 109 Mich. 98, 66 N.W. 681 (1898); Hardenburgh v. Hardenburgh, 133 Ia. 1, 109 N.W. 1014 (1906).13 Chafin Will Case, 32 Wis. 197 (1873).14 Estate of Week, 247 Wis. 197 (1944).15 O’Dell v. Goff, 149 Mich. 152, 112 N.W. 736 (1907).16 Supra, note 7.
nurse saying that he was not going to pay for the care of an illegitimate child. After the child was about eight months old the testator's wife left him, taking the child with her. In 1925 the testator obtained a divorce from his wife, and in the proceedings referred to Mary as his child. The afternoon before drawing his will, testator inquired of his attorney whether "he could disinherit a child;" and was told that he could. That same evening in talking with a friend he again stated that Mary was red haired and was not his daughter. The next morning he executed the will in which no mention was made of his wife or daughter, all his property being given to nieces and nephews with whom he had maintained friendly relations.

In the McGovern case there was some evidence of a basis for the testator's beliefs, other than the fact that the daughter had red hair. Testimony was introduced to the effect that testator had venereal disease in his youth, and a medical expert testified that, assuming such to been a fact, the testator might well have felt one of the complications in his case to be sterility and the impossibility of being a father. The Court did not consider that whether the testator had venereal disease might have been peculiarly within testator's knowledge, especially since he was a doctor, and something not likely to be broadcast; but stated that, "the evidence of the existence of this disease is decidedly lacking in convincing quality." The Court went on to say that assuming he had sexual neurasthenia prior to his marriage, he apparently overcame it a few weeks after marriage.

There was evidence in the case that the testator was not entirely closed-minded about the question of the legitimacy of his daughter. He had agreed with his wife that a blood test be taken of Mary. Such a test was taken of Mary and later sent to him by his wife. It was said in the case that his wife never heard from him again. However, it should be noted that the results of the test were not shown in the case. Such results might well have been a significant factor in his failure to answer his wife and the continuance of his belief in the illegitimacy of his child.

Further evidence of testator's open-mindedness was his agreement to meet with his daughter in 1935. At that time they had luncheon and visited together for a short time. The Court, however, did not consider this as evidence of the testator's willingness to weigh the bases for his beliefs, but dismissed the matter with: "Whatever hopes may have existed in the heart of either father or child as to the outcome of this meeting, no feeling of love or affection was aroused and they parted."

In determining that the will of the testator in the McGovern case was the product of an insane delusion the court naturally considered only the evidence before it. It could not take into consideration the
possibility that the testator might have had evidence not before the
court for his beliefs. It had to consider and weigh such evidence as
was still remaining twenty-seven years after the birth of the child and
put itself in the place of the testator; and the Court decided that
a sane man would not have formed such beliefs as those held by the
testator.

It has been said in some of the cases and texts that an insane de-

lusion such as will affect testamentary capacity is an idea or belief which
has no basis in fact or reason and evidence, or in other words a belief
in a state of facts that does not exist and which no rational person
would believe to exist.\(^\text{17}\) This would seem to indicate that where there
is any evidence to support the testator's belief, it is not an insane de-

lusion. However, an examination of the cases shows that the courts
have found an insane delusion even though there was some slight evi-
dence on which the testator might have formed his belief. Beliefs
originally based on some evidence and magnified beyond all reasonable
proportion have been considered insane delusions, to the same extent
as if they had not been based upon any evidence. In an early English
case the court admitted that there were some slight circumstances for
testator's antipathy toward his daughter, but found that the testator had
carried his aversion toward her to such a point that he was incapable of
manifesting any "intelligible sense" on the matter and that his will
disinheriting her was the result of an insane delusion.\(^\text{18}\) Similarly, in
a Wisconsin case, the Court sustained the contentions of the contestants
that the testatrix labored under the delusion that her only living child
and her son-in-law had ill-treated her; had purposely made her un-

comfortable and unhappy while she lived with them; had permitted
their young children to annoy her in different ways; and had even
attempted to poison her. There was testimony of several of proponent's
witnesses to conversations had with the testatrix, in which she com-
plained of her daughter and son-in-law's treatment of her, and said
that she believed they proposed to poison her or make way with her
in some way. The Court gave these statements of the testatrix little
or no weight in deciding whether she had a sufficient basis for her
beliefs. Nor did the Court put a heavier burden of proof on the con-
testants as a result of the introduction of such statements. In con-
sidering the evidence produced by both sides, the Court determined
that the proponents had not shown a sufficient basis for the unnatural
beliefs of the testatrix.\(^\text{19}\) Cases of this nature are characterized by

\(^{17}\) 68 Corpus Juris 433.

\(^{18}\) Dew v. Clarke, 3 Add. 79, 162 Eng. Reports. 410 (1826).

\(^{19}\) Ballentine v. Proudfoot, supra, note 11.
upon the same state of facts, or an embellishment of facts beyond that point which would be reached by what the courts consider a sane man.\textsuperscript{20}

In a consideration of the quantum of proof which must be adduced by the contestant, note should be taken of the type of insane delusion which the contestant is attempting to prove. Where an insane delusion involves a belief that a child born in wedlock is illegitimate, the contestant's task is less arduous because of the very strong presumption of legitimacy. This presumption is so strong in the law as to give to a belief of a testator to the contrary the color of insanity. Declarations of the testator in such a case are of no avail to the proponent. On the other hand, where the contestant is attempting to prove that, although the testator may have believed his child to have been legitimate, he disinherited such child because of an insane delusion regarding the morals of the child, he will have a greater burden to sustain and statements of the testator may have significance. In an Iowa case involving the question of whether the testator had sufficient basis for his beliefs relative to the morals of his daughter, the Court put a greater burden on the contestants as a result of testimony of one of proponent's witnesses to the effect that the testator had said that he “knew” something about his daughter which had turned him against her, without relating what he knew. The Court stated:

“The basis for holding that a belief is an insane delusion is that it is harbored without any evidence to support it. The testator being dead, and having failed to offer any explanation or make any statement regarding the facts from which he claimed that he 'knew' that the appellant was immoral, the appellant was handicapped to prove that the conclusion of the testator was wholly unfounded. But it is elemental that before a belief of this character can be held to be an insane delusion it must be established that the belief is wholly false. It is therefore incumbent upon the appellant at least to establish the fact that the belief expressed by the testator that she was an immoral woman was wholly wanting in foundation, no matter from what source the testator obtained the claimed 'knowledge.' ”\textsuperscript{21}


\textsuperscript{21} Firestine v. Atkinson, 206 Ia. 151, 218 N.W. 293 (1928). In this case the court cited the earlier Iowa case of Hardenburgh v. Hardenburgh (see footnote 9 above) in which, under a similar set of facts and similar evidence, except for the statement of the testator that he “knew” something about his daughters, the court had held the testator to be the victim of insane delusions. In that case the court said: “It is almost conclusively shown that the testator was the subject of the delusions which are said to have existed in his mind ...” In the earlier case great weight was given to the evidence of reputation of the daughters in the community, while in the later case, such evidence was given practically no weight in considering whether testator was insane. While the court quoted extensively from the earlier case, it made no attempt to distinguish the two cases and did not specifically overrule the Hardenburgh case.
As to cases involving testator's delusions respecting the legitimacy of his children, statements of the testator of this nature do not appear to have the effect of adding to the burden of the contestant in Wisconsin. In *Will of McGovern* the testator had frequently stated that he "knew" of his wife's affairs with several men in the community. There was no similar statement by the Court that it was then incumbent upon the contestant to rebut the implications underlying such statements. Furthermore, it is at least doubtful that the Court would add to the burden of the contestants in the proof of delusions on other matters because of any statements of the testator. On several occasions the Court has recognized the propensity of persons controlled by insane delusions to make assertions contrary to their actual feelings.\(^2\)

An unnatural disposition of the property of the testator carries considerable weight as indicating an insane delusion. While it is true, as a general proposition, that one may dispose of his property by will as seems best to him, it is equally true that, where a will absolutely disinherits the children of the testator, it is a circumstance to be considered on the issue of the testator's mental condition. The children of the testator are the natural recipients of his bounty, and, when they are entirely ignored in the disposition of his property, it is prima facie an unnatural and unreasonable act.\(^3\) The common sense of mankind condemns, as contrary to natural justice, a will which practically disinherits certain children, and leaves the bulk of a large fortune to others who have done nothing or much less to deserve it, and are perhaps better able to meet the struggles of life; and courts and juries have the right to take that fact into consideration in determining the competency of the testator to make a will.\(^4\) In *Will of Shanks*, where the testator left the homestead and household furniture, valued at

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\(^2\) Will of Shanks, supra, note 9; Will of McGovern, supra, note 7.

\(^3\) Bever v. Spangler, 93 Ia. 576, 61 N.W. 1072 (1895).

\(^4\) Rivard v. Rivard, supra, note 12. In this case the testator died leaving seven children—three sons and four daughters. In his original will he made an equitable division of his property. By various codicils he took away the larger share given by the first will to five of his children, and left most of it to his two sons, Paul and Ephraim. The codicils presented some peculiar features, which indicate a loss of memory and an unstable character. There were only two weeks between the second and third; 17 days between the eighth and ninth; five days between the tenth and eleventh; the third and fourth were made upon the same day; and the eighth and ninth are identical in language. The contestants contended that the testator's reason for disinheriting his youngest daughter was that he was under the insane delusion that she was an inmate of a house of ill fame; his reason for disinheriting his son was the delusion that he was a drunkard; and his grandchildren, upon the belief that his son-in-law had threatened to kill him. The court said: "So far as disclosed upon this record, there was not the slightest foundation for this belief in the unchastity of his daughter or the designs of Lodewycy (his son-in-law). There is evidence from which it may be reasonably inferred that he had some foundation for his belief in the habits of his son Charles. Charles, however, was a witness, and the jury had a better chance to judge as to the foundation for his father's treatment, and whether his belief amounted to a delusion."
$4000, for life, and $3000 as a legacy, to his wife, giving the balance of his property, valued at $5000, to nephews and nieces, the court said:

"There is no good reason shown why, under the circumstances of this case, the testator should not have left all his property to his wife, who for fifty years had helped earn it and whose needs required the income of all of it, if not the principal or a part thereof, for her support. By the will she was required to pay taxes to keep up the homestead. This, it is shown, would nearly exhaust the income of the $3000 given her, leaving her almost nothing for support in her old age. A sane man would not do that to a wife who for over fifty years had faithfully performed all the duties of wifehood—especially where, as here, his nephews and nieces had so little claim on his bounty."

For an insane delusion to have the effect of invalidating a will, it must be shown to have caused a different disposition than would have been made had the testator had an entirely sane mind. Insane delusion of a testator, or partial insanity, will defeat the will only when it can be fairly inferred that the instrument was affected by it. "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 incapacity is sufficiently shown to invalidate the will made. The fact that the testator has made the same disposition of property to a child he regarded as legitimate is not conclusive that his delusion regarding other children did not affect the provisions of his will. Thus, where a testator had eight children, only the first two of which he regarded as his, and where he gave one of the first two children all of his estate and left nothing to the other seven, the court considered all of the facts and came to the conclusion that but for the obsession dominating the testator he would have treated his children differently—that he would have made a different will. On the other hand, where the testator was shown to have treated one of his sons, whom he regarded as not his own, as a father should treat a son; to have made provision for him from time to time; and

25 Will of Shanks, supra, note 9.
26 Will of Cole, 49 Wis. 179, 5 N.W. 346 (1880). In this case the testator left his entire estate to his widow. His son contested the will contending that the testator was under an insane delusion relative to the son's legitimacy. The court held that even assuming an insane delusion on the part of the testator, such delusion was not shown to have affected the provisions of the will. It pointed out that the estate consisted of not more than $5000 to $7000, that the wife had cared for the testator for eight years during much of which time he was an invalid, and $2500 of her own money had been expended before he died. The court further noted that his wife would have been left at testator's death without any means of support other than what she might derive from his estate. As to the son, it appeared that he had been provided for adequately otherwise by the testator.
28 Ann. Cas. 1916 c, p. 4.
29 Will of Behm, supra, note 9.
where it might be presumed that the deceased thought his son would inherit the father's divorced wife's estate, and thus be provided for indirectly out of his estate, the court found the provisions of the will not to have been influenced by the testator's delusions.\textsuperscript{30}

The insane delusion must have been existent when the will was made in order for it to invalidate the will. The contestant is aided in this regard by a presumption that an obsession shown to have existed at one time and to have continued over a period of years plagues the testator until it is shown by clear evidence to have left him. The Wisconsin courts term an obsession which has inflicted a testator for several years a "continuing obsession" and give much weight to evidence of the testator's insane delusions during several years of his life in determining whether he was acting under an insane delusion at the time of making his will.\textsuperscript{31} This evidence is considered superior to statements by the testator in his will that he did not entertain at the time of making the will the beliefs on which it is contended his insane delusions were grounded. In \textit{Will of Shanks} there was evidence of a continuing delusion on the part of the testator as to his wife's infidelity. To rebut this evidence the proponents pointed out the statements of the testator in his will that he was sorry he had wrongfully accused her of infidelity, and believed her to be a perfectly honorable and a good, virtuous wife. His feelings toward her, he said, were in no way bitter at the time of making the will, and he had tried by the will to properly take care of and leave enough to protect her as long as she should live. The court held this not to be sufficient to overcome the evidence of continuing obsession produced by the contestants, and found the testator to be mentally incompetent at the time of making the will. Said the court:

"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 made in the will. Upon a consideration of all the evidence we deem that sufficient weight cannot be given to set aside the findings of the trial court."\textsuperscript{32}

The burden of making out a prima facie case that the decedent had testamentary capacity is on the proponent. Proof to this extent


\textsuperscript{31} Will of McGovern, supra, note 7. In this case the lower court, relying on the evidence of an attorney that on the afternoon before testator drew his will, he had asked the attorney whether he could disinherit a child, decided that the testator was free from his obsession at the time he drew and executed the will. In reversing the lower court, the Supreme Court said: "If a man is under a mental obsession, or had a mental obsession and then repeatedly for four or five years or ten years by his acts or words shows that he still is under the control of that mental obsession that is at least substantial evidence that it is a continuing obsession.”

\textsuperscript{32} Will of Shanks, supra, note 9.
is necessary on a contest the same as if probate were unopposed. But if the grounds of contest are that the testator lacked testamentary capacity because of an insane delusion, the burden of proof, in the sense of "risk of persuasion", is on the contestant. However, the contestant is aided by a number of presumptions in this regard. Children born in wedlock are presumed legitimate. Ignoring children in a will is prima facie an unnatural act. An obsession once existant is presumed to continue. Furthermore, the courts will not look beyond the evidence before them to determine whether the testator had insufficient evidence before him on which he based his alleged insane belief.

The effect on the disposition of property where a child has been omitted from a will as a result of an insane delusion on the part of the testator is to be distinguished from the effect in the case of a pretermitted heir. Where the child has been omitted as a result of the insane delusion the entire will falls and the estate passes under the laws of intestacy. However, in the case of a child omitted by mistake, the will stands and the share which the child would have taken under the laws of intestacy is first taken from the estate not disposed of by the will, and if that be not sufficient all of the devisees and legatees contribute in proportion to the value of the estate which they received to make up the deficiency.

In conclusion, it appears that although a testator may have general testamentary capacity, such that he knows the general nature of his property, the objects of his bounty and can keep the two in mind long enough without prompting to form a rational decision, his will may nevertheless fail because he was possessed of an obsession which amounted to an insane delusion at the time of making his will. The obsession is deemed to have controlled him and prevented him from properly recognizing the objects of his bounty. In such a situation

34 Wis. Stats., sec. 328.39: "Presumption of legitimacy. Whenever it is established in an action that a child was born to a woman while she was the lawful wife of a specified man, any party asserting the illegitimacy of the child in such action shall have the burden of proving beyond all reasonable doubt that the husband was not the father of the child."
36 Will of McGovern, supra, note 7.
38 Wis. Stats., sec. 238.12: "From what estate provision in such cases taken. When any share in the estate of a testator shall be assigned to a child born after the making of a will or to a child, or issue of a child, omitted in the will as herebefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient so much as shall be necessary shall be taken from all the devisees or legatees in proportion to the value of the estate they may respectively receive under the will unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will would thereby be defeated; in which case such specific devise, legacy or provision may be exempted from such apportionment and a different apportionment may be adopted in the discretion of the county court."
the court steps in and sets aside the instrument which was produced by the obsession rather than by the testator's free and unhampered will. As said in *Ballantine v. Proudfoot*: "In the execution of a will it is essential that the testator shall understand the nature of the act and its effects; shall be able to comprehend and appreciate the claims which he ought to regard and satisfy; and that no disorder of mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties; and that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it, which, if his mind had been sound, would not have been made."\(^{39}\)

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\(^{39}\) Supra, note 11.