Wills - Testamentary Capacity of Persons Under Guardianship

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Wills—Testamentary Capacity of Person Under Guardianship.—The contest-ant of a will alleged lack of testamentary capacity. Testator at times drank excessively and was under guardianship in 1933. In 1934 he made a will in which contestant, the testator's daughter, was to share in his property. In 1936 the testator made another will leaving out the contestant. There was no evidence to show that he was under the influence of liquor at the time he made the second will. Two days prior to his being put under guardianship contestant took a deed to certain property from the testator, in payment for her taking care of him. Contestant argued that the fact that the testator was under guardianship at the time he executed the will made a prima facie case in her favor and the evidence did not overcome this presumption. The trial court admitted the will to probate. On appeal, held, affirmed. The mere fact that the testator was under guardianship at the time he made the will did not establish the fact that the testator lacked testamentary capacity. In re Willer's Estate (Iowa 1938) 281 N.W. 155.

The criterion of testamentary capacity has been expressed in the Will of McLeish, 209 Wis. 417, 245 N.W. 197 (1932), as: "Did he (the testator) have sufficient active memory to collect in his mind and comprehend, without prompting, the condition of his property, his relations to 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 rational judgment in relation to them?"

Thus, proof of inability to manage business affairs, eccentricities of old age, or weakmindedness is not of itself sufficient to establish a lack of testamentary capacity. Therefore, the appointment of a guardian on such grounds does not necessarily destroy testamentary capacity.

In re Wah-kon-tah-he-um-pah's Estate, 108 Okla. 133, 232 Pac. 46 (1924), it was held that the mere fact that a testator had been adjudged incompetent to manage his property and business affairs, and that such incompetency had not been judicially removed at the time the will was made, was not sufficient of itself to show mental incompetency to make a will, nor did the existence of a guardianship of itself destroy capacity to make a will. In a similar suit where the testatrix was adjudged mentally incompetent to manage her business affairs, the court said that the existence of a guardianship did not of itself constitute legal incapacity to make a will, but was no more than evidence of the fact of incapacity which could be rebutted by showing that the testatrix was mentally competent at the time the will was executed. The question of mental capacity to make a will is a question of fact, and is to be determined from the condition of the testatrix's mind at the time of making the will. Lena v. Patterson, 113 Okla. 156, 242 Pac. 238 (1925); In re Johnson's Estate (Mich. 1938) 281 N.W. 597.

The majority of court hold that the appointment of a guardian is competent and admissible as evidence to prove the absence of capacity to make a will. In Deleglise v. Morrissey, 142 Wis. 234, 125 N.W. 452 (1910), where in a guardianship proceeding an aged woman had been found incompetent to manage her own affairs, the court held that although not conclusive in a proceeding for probate of her will, the appointment of a guardian was properly considered as evidence of incompetency, and judgment denying probate was affirmed.

Some jurisdictions regard the appointment of a guardian as prima facie evidence of incapacity to make a will. Thus in Clement v. Rainey (Texas 1932) 50 S.W. (2d) 359 where, in a lunacy proceeding, the testator was found to be
of unsound mind, it was held that a prima facie case of lack of testamentary capacity was established. In *Waters v. Waters*, 201 Iowa 586, 207 N.W. 598 (1926), it was held that a person who has been adjudged of unsound mind and is under guardianship is, while the guardianship continues, *prima facie* incompetent to make a valid will.

The appointment of a guardian, in other jurisdictions, raises a presumption of incompetency to make a will, as distinguished from the foregoing cases which regard the appointment of a guardian as being *prima facie* evidence merely of such incompetence. In *Reese v. Hunter*, 185 Iowa 958, 171 N.W. 567 (1919), the court held the appointment of a guardian over the testator, who had been found incompetent because he squandered his money, to be presumptive proof of incompetency to make a will. In *In re Griffin's Estate*, 109 Pa. Super. 594, 167 Atl. 613 (1933), it was held that a presumption arises that there is no testamentary capacity where a guardian was appointed over the testatrix on the ground that she was weakminded.

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