

Mental Capacity to Make a Will

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A case study of the Weidenberger Estate

A recent case in Alberta provides welcome recognition that persons who are mentally ill or suffer from a mental handicap can successfully perform certain legal functions even though they may have a mental deficiency. Specifically, the case of the Weidenberger Estate held that a person with a mental illness can have the capacity to make a valid Will.

In this recent case, Mr. Weidenberger had been hospitalized at Alberta Hospital, intermittently over several years as a result of his schizophrenia, depression and mixed personality disorder. The Public Trustee was appointed his Trustee, as Mr. Weidenberger was unable to manage his own financial affairs. Mr. Weidenberger was a Hungarian immigrant who came to Canada in 1948. He was a survivor of the Russian front, had been a Russian prisoner of war and had likely seen death, starvation and suffering first hand on a scale that we could never appreciate. After arriving in Canada, he worked with the Canadian Pacific Railway and saved enough money to buy his own house in downtown Calgary

Mr. Weidenberger was a resident of Alberta Hospital from June 11, 1981 until his death in 1995 and had previously been admitted for extended lengths of time as a result of exhibiting bizarre behavior. Although several attempts were made to reintegrate Mr. Weidenberger into the community, he was unable to make a successful reintegration.

Mr. Weidenberger wrote a Will in his own handwriting in which he left "all his wealth" to his family in Hungary. He carried this handwritten Will in his pocket with a bundle of documents marked "important papers". The Will was brought to court to determine first, if it was a valid will. The court found that the document was a valid handwritten Will as it met the requirements of the Wills Act. It was wholly in Mr. Weidenberger's handwriting and had been signed at the bottom of the document by him.

The next question was whether Mr. Weidenberger had the requisite capacity to make a Will. Because Mr. Weidenberger was a patient of Alberta hospital and because the Public Trustee was appointed his Trustee, there were serious concerns about whether he

had capacity to make a Will. In fact, it seemed there was an assumption that he did not have capacity because of his diagnosis and because of the determination that he needed a Trustee to manage his affairs.

The court held that being under the control of the Public Trustee was not determinative. The cognitive functions required to be competent to manage your affairs versus having the capacity to execute a Will are two distinct and separate functions. A person may function at one level and not the other. The court started with the doctrine that a person must be free to dispose of their property in a will and the courts should not frustrate those wishes without just cause.

In this case the court held that it was not unreasonable that Mr. Weidenberger may not have known the amount of his estate, given that he had been out of contact with his financial affairs for several years and had not been allowed to control his own affairs. The court found that the deceased's insight into the value of his estate was not a prerequisite for finding testamentary capacity in the circumstances of this case.

It was clear that Mr. Weidenberger knew who his family was and the medical experts said that while he suffered from delusions and paranoia, his delusions did not involve his family. He spend his last years unable to communicate effectively, isolated, alone and depressed; but he carried his handwritten will, naming his family members who would get his estate when he died. From what may have been a happier time he named his aunt, uncles and their children and his only sister as beneficiaries. He carried this page for seven years in his pocket along with "important papers" wrapped in an elastic band.

The court made a number of interesting findings that are helpful to persons who suffer from a mental illness or are mentally handicapped and who may wish to make a Will. The court found that there should not be a higher standard of proof just because the Testator had a history of mental illness. Cognitive impairment and confusion alone were not to be grounds for declaring a person incapable of making a Will. Even though the mental power may be reduced below the ordinary standard, if there is sufficient intelligence to understand and appreciate the testamentary act, then the power to make a Will remains.

This case certainly opens the door for anyone with a mental handicap or illness to be able to prepare a Will. The relevant period for assessing capacity is at the time that the Will is created. The courts have recognized that the deceased may only have temporary periods of rational and lucid behaviour and in such moments, an individual may competently dispose of his or her estate.

The court specifically said "The court must afford the mentally ill the benefit of being treated with dignity and respect by allowing them the right to manage their own affairs to the extent to which they are capable". This case is an excellent example of the treatment which should be afforded the mentally ill and the handicapped. Those with a mental illness must be recognized for what they can do and there should not be an assumption that a diagnosis of mental illness is indicative of all that a person can achieve.

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