Last Will And Testament: Court Looks At Nurses' Notes To Decide Issue Of Mental Capacity.

An elderly lady was admitted to the hospital from her home, then sent to skilled nursing for rehab, then to an assisted living home, then back to the hospital and then back to assisted living.

She had chronic kidney problems that required dialysis. Sometimes her mental status deteriorated into confusion right around her dialysis appointments. At some point she suffered a stroke which also seemed to affect her cognitive status.

Over the course of a few weeks she spoke with an attorney several times on the phone for him to draw up her last will and testament. She had had a lifelong rift with one of her siblings and chose not to give anything in her will to the now-deceased sibling's children. She also wanted to give substantial sums to charity rather than to her other two siblings and their children.

The attorney mailed her will to her at the assisted living home. The social worker got a second witness from the staff and the resident signed her last will and testament in her room at the home.

When she died the children of her estranged sibling contested the will. The Supreme Court of South Dakota upheld the will as valid.

Any adult over the age of eighteen who is of sound mind may make a last will and testament.

One has sound mind, for the purpose of making a last will and testament, if he or she is able to comprehend the nature and extent of his or her property, the persons who are the natural objects of his or her bounty and the disposition that he or she desires to make of such property.

Soundness of mind does not necessarily imply the same degree of intellectual vigor one had in youth or that which is enjoyed by persons in perfect health.

Physical weakness is not determinative of soundness of mind.

It is not necessary that a person desiring to make a will should have sufficient capacity to make contracts or engage in complex and intricate business matters.

SUPREME COURT OF SOUTH DAKOTA
July 23, 2003

Court Looks To Nurses' Notes To Determine Mental Capacity

If the lady did not have sufficient mental capacity when she signed her will her will could be declared invalid. A one-third share of her property would go to each sibling or the share would be split up by the children of a deceased sibling.

If the will was valid, the nieces and nephews in question would get nothing.

The estranged relatives did not know the deceased well enough to testify about her mental capacity, as is often the case. Either way, those who stand to profit from the court's resolution of a will contest one way or the other are often barred from testifying.

The nurses at the assisted living home had been careful in their nursing progress notes to document periods of complete lucidity and periods of significant confusion. The court looked for the nursing notes most closely contemporaneous to the date and time of the will's signing, which did not seem to show any mental confusion.

The court also noted the nurses in the skilled rehab facility moved her into the Alzheimer's section on a physician's orders, then moved her out on their own initiative based on their nursing judgment that her bouts of confusion around her dialysis appointments were not Alzheimer's.

Nurses have no strict legal obligation to the heirs to see that a patient is mentally competent at the time a will is signed. The court did comment it might be a good idea to request a physician's or psychiatrist's consult if the nurses have any concerns. **Baun v. Estate of Kramlich, __ N.W. 2d __, 2003 21710588 (S. Dak., July 23, 2003).**

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