

Testamentary Capacity To Execute A Will: Judge, Jury And Experts Look To Nursing Notes.

A ninety year-old gentleman passed away in a nursing home survived by a brother and several nieces and nephews.

Sixteen months earlier, while in the nursing home, he had signed a will leaving his entire estate to one of his nephews and the nephew's wife. The nephew and a long-time neighbor of the deceased before he went to the nursing home had made the arrangements for a lawyer to draft the will and for the man to sign it with two of the lawyer's employees as the witnesses.

After he had died and the will came to light the man's brother filed a lawsuit to have the will declared void on the grounds the man did not have legal testamentary mental capacity to execute a valid will. If the will was void there was no will, and with no will the brother would inherit everything.

The man's treating physician and a psychiatrist who evaluated patients for the nursing home testified the man had problems, but was mentally competent.

The brother's lawyers hired a physician to testify based on the medical and nursing records. His testimony highlighted episodes of behavior suggesting dementia and concluded he was not mentally competent.

A person has the testamentary capacity to execute a will if, at the time of the execution of the will, the person has sufficient mind and memory to understand he or she is making a will, has an understanding of the property he or she owns and wishes to leave in the will, knows and recalls the persons who are the natural objects of his or her bounty and has a plan for the manner in which the estate is to be divided.

The key legal factor is not the person's mental status in totality, but the mental capacity the person did or did not possess at the very time the will was signed.

SUPREME COURT OF RHODE ISLAND
December 16, 2004

Nursing Notes Re

Mental Status Checks, Behavior, Mood, Agitation, Outbursts, Wandering

In this case the nurses who had cared for the deceased were not personally brought into the courtroom. Nevertheless, the case points up the importance of careful and accurate nursing documentation of nursing home patients' behavior that indicates mental status.

As a general rule the law permits a medical expert, whether or not the expert has ever treated or even personally met the individual in question, to rely on observations made and charted by other caregivers in formulating an expert medical opinion about the individual.

The court faulted the physician hired by the brother's lawyer for pulling out episodes of confusion, agitation and acting out from the nursing notes which strongly suggested dementia, which would rule out the capacity to execute a valid will, without relating those episodes temporally to the exact date when the man actually signed his will.

The court felt compelled to take the unusual step of overruling the jury's verdict that invalidated the will and ordered a new trial to decide the case. **Pollard v. Hastings**, 862 A. 2d 770 (R.I., December 16, 2004).

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