SOUNDNESS OF MIND

by Curtis E. Shirley

In a Will or Trust Contest, or in many cases where the issue is the validity of what a person signed, the primary inquiry is whether the person had the legal capacity to sign the document. A person is of sound mind if he or she is able to:

(1) Know the extent and value of her property;
(2) Know the number and names of people who might naturally be expected to receive property under the will;
(3) Know what each person should receive, given the person's conduct toward the person making the will; and
(4) Keep these facts in mind long enough to complete a will.
See Indiana Model Civil Jury Instructions 3903, 3905, and 3907.

If even one of these is lacking, the Will (and Trust) is set aside. *Lowe v. Talbert, 177 N.E. 339 (Ind.App. 1931).*

Some cases start with the proposition that soundness of mind is presumed. But in many ways this is but another way of saying the burden of proof is on the one who asserts unsoundness of mind. An old saying in probate litigation is that the trial court allows evidence of the decedent's life from birth to death. *See Ailes v. Ailes, 11 N.E.2d 73 (Ind.App. 1937)* (period of time left to trial court's discretion). Why a testator disinherited a family member may involve reasons which span decades. Some people live a lifetime with medical conditions which might affect their memory. Dementia is not a sudden illness and does not have a sudden cure. Although evidence is usually allowed as to circumstances and events around the time of the signing, the issue of soundness of mind is directed to the testator's mental state at precisely the time he or she signed the disputed document. *Peters v. Knight, 8 N.E.2d 401 (Ind.App. 1937).*

To follow is a selection of some of the factors which may be considered in whether to set aside a Will or Trust on the basis of an unsound mind:

1. If he or she made a natural or an unnatural disposition of the estate. *Snouffer v. Peoples Trust, 212 N.E.2d 165 (Ind.App. 1965).*

2. Monomania. *Swygart v. Willard, 76 N.E. 755 (Ind. 1906).* Mental derangement or insanity. *Eggers v. Eggers, 57 Ind. 461 (Ind. 1877).* Insane delusions. *Barr v. Sumner 107 N.E. 675 (Ind. 1915).*

3. Other wills (and trusts). *Ditton v. Hart, 93 N.E. 961 (Ind. 1911)*; *Cook v. Loftus, 414 N.E.2d 581 (Ind.App. 1981)* (beneficiaries claiming under a previous Will have burden to prove the previous Will was validly executed and not revoked).

4. Statements of the testator about his or her intentions. *Conway v. Vizzard, 23 N.E. 771 (Ind. 1890).*

5. Whether testator is under guardianship. *Harrison v. Bishop, 30 N.E. 1069 (Ind. 1892)*; *Emry v. Beaver, 137 N.E. 55 (Ind. 1922)* (ward can still sign a valid Will).

6. Intoxication. *Swygart v. Willard, 76 N.E. 755 (Ind. 1906).*

7. Loss of memory. *Lamb v. Lamb, 5 N.E. 171 (Ind. 1886).* "[P]roof of unsoundness of mind of a permanent nature raises an inference that such condition continues until the contrary is shown." *Farner v. Farner, 480 N.E.2d 251, 259 (Ind.App.1985).*

8. Religious beliefs. *Barr v. Sumner 107 N.E. 675 (Ind. 1915).*

9. The case law is extensive with illustrations as to how any mental weakness may invalidate a Will or Trust, if accompanied by undue influence, duress, inadequacy of consideration, misrepresentations, concealment, taking advantage of ignorance, inexperience, or want of advice. A person may have sufficient mind to know and comprehend that he or she is making a will or trust and yet be prompted to so dispose of the property by some form of unsound mind. So any unsoundness of mind which affects the making of the document may set it aside. Or maybe not.

As a practical matter, cases tried to the court may place more weight on the testimony of the drafting attorney and witnesses. Cases tried to the Jury may place more weight on the testimony of the medical providers.

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